

AGENDA
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE
3:30 P.M.
Room EW42
Wednesday, January 09, 2019

SUBJECT	DESCRIPTION	PRESENTER
	Organizational Meeting	

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Dayley	Rep Ehardt	Rep Troy
Vice Chairman Chaney	Rep Scott	Rep Young
Rep Kerby	Rep Goesling	Rep Gannon
Rep Amador	Rep Hartgen	Rep McCrostie
Rep Zito	Rep Marshall	Rep Wintrow
Rep Zollinger	Rep Ricks	Rep Davis

COMMITTEE SECRETARY

Wendy Carver-Herbert
Room: EW56
Phone: 332-1127
email: hjud@house.idaho.gov

MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Wednesday, January 09, 2019

TIME: 3:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis

**ABSENT/
EXCUSED:** None

GUESTS: None

Chairman Dayley called the meeting to order at 3:48 p.m.

Chairman Dayley welcomed the committee. He asked committee members and the secretary to introduce themselves.

Chairman Dayley covered committee procedures and preferred practices.

Rep. McCrostie and **Rep. Marshall** will serve as minutes proofreaders.

Vice Chairman Chaney explained Administrative Rules will be reviewed by the full committee.

Rep. Gannon asked if the committee can only address changes in the rules that are being proposed, or if it can make changes to other sections of the rules as well.

Chairman Dayley explained the Legislature has discretion to propose changes to any Administrative Rule, but recommends the committee stay focused on the rules and changes being presented. Changes to other sections, or rules by the Legislature is allowed through other established legislative process and procedures.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 4:09 p.m.

Representative Dayley
Chair

Wendy Carver-Herbert
Secretary

AGENDA
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Tuesday, January 15, 2019

SUBJECT	DESCRIPTION	PRESENTER
Docket No. 11-0301-1801	Alcohol Testing	Major Charles Spencer, Idaho State Police
	State Public Defense Commission Overview	Kathleen Elliott, State Public Defense Commission
Docket No. 61-0102-1801	Uniform Data Reporting & Forms for Annual Reports	Kathleen Elliott
Docket No. 61-0103-1801	Contracts & Requirements Between Counties and Private Attorneys to Provide Indigent Defense Services	Kathleen Elliott
Docket No. 61-0104-1801	Procedures & Forms for Application & Dispersment of Indigent Defense Grants	Kathleen Elliott
Docket No. 61-0108-1801	Rules Definition: Administration of Indigent Defense Delivery System	Kathleen Elliott

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Dayley	Rep Ehardt	Rep Troy
Vice Chairman Chaney	Rep Scott	Rep Young
Rep Kerby	Rep Goesling	Rep Gannon
Rep Amador	Rep Hartgen	Rep McCrostie
Rep Zito	Rep Marshall	Rep Wintrow
Rep Zollinger	Rep Ricks	Rep Davis

COMMITTEE SECRETARY

Wendy Carver-Herbert
Room: EW56
Phone: 332-1127
email: hjud@house.idaho.gov

MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Tuesday, January 15, 2019

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis

**ABSENT/
EXCUSED:** Representative Troy

GUESTS: Charlie Spencer, ISP; Jesse Taylor, IAIL; Amaia Griggs, ASUI; Kathleen Elliott, Darrell Bolz, Nichole Devaney, Brianne McCoy, PDC; Kelly R Aberasturi, Owyhee County; Eric Fredericksen, SAPD; Jared Larsen, Governor's Office; Jay Shaw, Admin. Rules; Kathy Griesmyer, ACLU; Andrew Masser, IACDL

Chairman Dayley called the meeting to order at 1:31 p.m.

MOTION: **Rep. McCrostie** made a motion to approve the minutes of the January 9, 2019 meeting. **Motion carried by voice vote.**

Chairman Dayley turned the gavel over to **Vice Chairman Chaney** for presentation of administrative rules.

DOCKET NO. 11-0301-1801: **Major Charles Spencer**, Idaho State Police (ISP) presented the docket. This temporary rule change updates the incorporation by reference to the newest NHTSA conforming products list (CPL) posted in the federal register. The November 2017 revision of the CPL shows all the evidentiary breath testing instruments in Idaho are approved for use on the NHTSA conforming products list. Because this temporary rule change was necessary during the legislative moratorium period, ISP will go through the proposed rule making process after the end of this legislative session and come back next year to complete the process.

MOTION: **Rep. Amador** made a motion to approve **Docket No. 11-0301-1801**. **Motion carried by voice vote.**

Kathleen Elliott, Executive Director, State Public Defense Commission (PDC) presented an overview of the Commission. The purpose of the PDC is to administer funds to the counties, who provide indigent defense services; improve the level of indigent defense services; and improve the standards for defense attorneys statewide. In 2017, the PDC was asked by legislators and stakeholders to gather Idaho specific data on defense attorney workloads across the state. This work was done by BSU's Idaho Policy Institute and included review of other such studies, interviews with experts, and quantitative and qualitative data gathered through actual time tracking of defending attorneys. It also gathered data on their perceptions of whether they had adequate time to serve clients. According to Ms. Elliott, more than 10,000 cases were tracked. Input was also gathered from experienced public and private Idaho defense attorneys. The culmination of that work resulted in the 2018 Idaho Public Defense Workload Study (See Attachment).

Based on questions from the Committee, **Ms. Elliott** stated there has been robust discussion about whether indigent defense should be handled at the state or local jurisdiction levels. The goal of the PDC is to collect relevant data that isn't a burden to attorneys and counties. The Commission is not currently looking at data around individuals receiving indigent defense assistance, but have the assets to support their own defense. She also explained the workload study only includes the hours for defenders. The pending rule incorporating the workload standards also provides a relief clause for attorneys and counties who exceed the workload standards for justifiable cause. She emphasized the Standards for Defending Attorneys and the maximum caseloads are a starting place and it will be continuously looked at and revised as necessary, but it takes into account the Idaho-specific legal environment.

**DOCKET NO.
61-0102-1801:**

Kathleen Elliott, Executive Director, State Public Defense Commission presented the docket, which makes technical changes, addresses mandatory continuing education, and clarifies reporting procedures particularly as they relate to protecting attorney-client confidentiality.

MOTION:

Rep. Zollinger made a motion to approve **Docket No. 61-0102-1801. Motion carried by voice vote.**

**DOCKET NO.
61-0103-1801:**

Kathleen Elliott, Executive Director, State Public Defense Commission presented the docket. This section of rule pertains to model contracts and core requirements for contracts between counties and private attorneys for providing indigent defense services. In answer to a question from the Committee, Ms. Elliott explained the rule requires that contracts be in writing, but allows counties the right to build their own contracts if they choose to do so.

MOTION:

Rep. McCrostie made a motion to approve **Docket No. 61-0103-1801. Motion carried by voice vote.**

**DOCKET NO.
61-0104-1801:**

Kathleen Elliott, Executive Director, State Public Defense Commission presented the docket. This rule establishes the original procedures and forms for the application and disbursement of indigent defense grants. There are no changes to the pending rule and it is being adopted as originally proposed.

MOTION:

Rep. Gannon made a motion to approve **Docket No. 61-0104-1801. Motion carried by voice vote.**

**DOCKET NO.
61-0108-1801:**

Kathleen Elliott, Executive Director, State Public Defense Commission presented the docket. This rule amends standards for defending attorneys. The standards include maximum caseloads for defending attorney's, and are based on the 2018 Idaho Public Defense Workload Study. However, if the proposed Idaho standards should sunset in 2020, it refers to the use of national caseload limits from the American Bar Association's National Advisory Committee (NAC).

In answer to questions from the Committee, **Ms. Elliott** stated \$3.6 million is requested to solely support compliance with the standards and is supported by the Governor. Based on comments and questions from several Committee members, Ms. Elliott emphasized the rule has a mechanism for relief if a defender or county nears, or exceeds the maximum caseload requirement and the PDC assist counties with recruitment, funds and training when more defense attorneys are needed. There also are extraordinary litigation funds available for extreme cases. Defenders can attest to the need for providing the level of constitutionally required representation.

**ORIGINAL
MOTION:**

Rep. Amador made a motion to approve **Docket No. 61-0108-1801.**

Speaking to the motion, **Rep. Amador** stated the Commission did exactly what it was asked to do by developing Idaho-specific standards based on Idaho-specific data and should be allowed to move forward.

The committee recessed at 3:21 p.m. and reconvened at 3:26 p.m.

Kelly Aberasturi, Owyhee County Commissioner spoke as a neutral party, but described the difficult situation his county is in with respect to providing public defense. The Public Defense Commission has supported his county and been responsive to all their requests.

Kathy Griesmyer, Policy Director, ACLU-Idaho spoke **in opposition** to the workload standards stated in section III, subsection C and incorporated by reference in **Docket No. 61-0108-1801**. She said the ACLU supports the idea of workload standards; however, the proposed workload maximums are too high and will perpetuate excessively high caseloads for defending attorneys. She recommended removing the Idaho-based workload standards in subsection C and rely on subsection B, which refers to the use of standards established by the National Advisory Committee (NAC).

Andrew Masser, Idaho Association of Criminal Defense Lawyers spoke **in support** of the pending rule and its standards for defending attorneys. He stated caseload standards are critical and the standards are not just a cookie cutter approach. It is just the beginning of public defense reform in Idaho and this is the first step.

**SUBSTITUTE
MOTION:**

Rep. Marshall made a substitute motion to approve **Docket No. 61-0108-1801**, with the exception of Section III, Subsection B and Subsection C.

Speaking to the motion, **Rep. Marshall** said he didn't want to discount the work of the Commission, but he is concerned about including caseload numbers in the rule.

**AMENDED
SUBSTITUTE
MOTION:**

Rep. McCrostie made an amended substitute motion to approve **Docket No. 61-0108-1801**, with the exception of Section III, Subsection C.

Speaking to the amended substitute motion, **Rep. McCrostie** said he is concerned that the caseload standards do not allow for any time off for vacations or personal time, so they may not be an accurate reflection of time needed to manage cases. He supports the removal of Subsection C. However, he is concerned that removing Subsection B removes all references to caseload standards, which should still be included.

Reps. Zollinger, Amador and Hartgen spoke **in opposition** to the amended substitute motion. Rep. Zollinger stated his concern that the NAC standards were developed in the 1970s, and the legal environment has significantly changed with the use of technology for research. All supported the position that the Idaho standards are well researched, and Idaho may lead the country in its effort to establish Idaho-specific data and standards.

**VOTE ON
AMENDED
SUBSTITUTE
MOTION:**

Vice Chairman Chaney called for a vote on the amended substitute motion to approve **Docket No. 61-0108-1801**, with the exception of Section III, Subsection C. **Motion failed by voice vote.**

**VOTE ON
SUBSTITUTE
MOTION:**

Vice Chairman Chaney called for a vote on the substitute motion to approve **Docket No. 61-0108-1801**, with the exception of Section III, Subsection B and Subsection C. **Motion failed by voice vote.**

**VOTE ON
ORIGINAL
MOTION:**

Vice Chairman Chaney called for a vote on the original motion to approve **Docket No. 61-0108-1801**. **Motion carried by voice vote.** **Reps. Marshall and Goesling** requested they be recorded as voting **NAY**.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned 4:14 p.m.

Representative Chaney
Vice Chair

Wendy Carver-Herbert
Secretary

IDAHO PUBLIC DEFENSE **WORKLOAD** **STUDY** 2018

IDAHO POLICY INSTITUTE



BOISE STATE UNIVERSITY



PUBLIC DEFENSE IN IDAHO

A Workload Study

Many states have conducted workload studies for the purpose of developing caseload standards that are tailored to their own legal environments. This report is the culmination of a year-long study of the workload associated with providing public defense in Idaho. The study tracked how much time Idaho attorneys spend on specific tasks associated with indigent defense cases as well as attorneys' perceptions of the average amount of time specific tasks and cases require for adequate and effective defense. This is the first time Idaho-specific data regarding indigent defense workloads across the state has been collected and analyzed. This report does not prescribe indigent defense workload standards; rather, the information presented here, and the data supporting it, is intended to inform future discussions and decisions made concerning caseload guidelines for Idaho's public defense system.

INTRODUCTION

Under the 6th Amendment to the U.S. Constitution, the accused have the right to have a lawyer advocate for their stated interests. In cases where the accused cannot afford to hire private counsel, the state is obliged under the 14th Amendment to provide effective representation at all critical stages of a criminal or delinquency proceeding in which a person may potentially lose his liberty.¹ Although the U.S. Supreme Court has never been asked to clarify whether a state may constitutionally pass on that obligation to local governments, the state remains responsible for ensuring that local governments meet the parameters of 6th Amendment case law. Idaho does not have a statewide public defense system, rather indigent defense is primarily managed at the county level by appointed defense attorneys.² Oftentimes, states have codified commissions to help advise the public defense system, despite jurisdictional level of management.

In 2014, the Idaho Legislature passed House Bill 542, creating the Idaho Public Defense Commission (PDC), and House Bill 634, providing funds for the commission to begin its work. Per Idaho Code 19-850, the PDC has been tasked with the responsibility of promulgating administrative rules related to Idaho's public defense system, including:

- Training and continuing legal education for defending attorneys,
- Uniform data reporting requirements and model forms,
- Model contracts for counties and defending attorneys,
- Administration of appropriated funds for counties' delivery of indigent services,
- Standards for defending attorneys, and
- Procedures for oversight, implementation, enforcement and modification of indigent defense standards.

In 2017, the PDC created the first set of standards for indigent defense attorneys. To promulgate additional rules, the PDC recognized a need for additional Idaho-specific data beyond the annual reports public defenders submit to the PDC. Thus, in 2017 the PDC contracted with Boise State University's Idaho Policy Institute (IPI) to conduct a study designed to investigate public defense attorney workloads. The goal of the study was to provide a body of Idaho specific data and information to the PDC to inform their recommendations concerning caseload guidelines and future workload standards for Idaho's public defense system. IPI's research team designed and implemented the study. This report to the PDC documents the study's methodology and the research team's findings.

With public defense management in the control of the counties, there has not been a consistent, statewide method in place to capture attorney workload; beyond the annual report counties are statutorily required to submit to the PDC.⁶ Most counties have not implemented a method for tracking attorneys' time. Therefore, although the number of cases an individual attorney carries each year is known, neither the total time, nor the type of time the attorney spends on each of those cases, is known. In addition, until this study, data on the perception of attorneys regarding their workload, perception of time needed to deliver defense, and available resources was not available.

To help address the gaps in knowledge outlined above, the research design process for this project included developing specific research questions. The research questions outlined to guide this study included:

How are Idaho's public defense attorneys currently spending their time on cases?

How do public defense attorneys perceive they are spending their time on cases?

How do public defense attorneys perceive the sufficiency of the time they spend on cases?

What do public defense experts in Idaho perceive to be an acceptable standard for specified case loads?

Taking into consideration funding and time constraints, the research team then determined the methodologies best suitable for addressing those questions. Therefore, a mixed methods approach was employed in order to provide the most robust picture; the quantitative data informs the "how," the qualitative data informs the "why." Without both, future decision-making around workload standards would be of limited utility. The quantitative components of this project – the Time Tracking and certain aspects of the Time Sufficiency Survey – illustrate how attorneys may be spending their time and how they perceive time should be spent. Meanwhile, the qualitative aspects of this project – sections of the Time Sufficiency Survey and the Delphi process – provide the narrative behind the numbers, thus revealing the contributing factors to specific numeric outputs of both measured and perceived time. Both components are necessary for the PDC to understand how attorneys are spending their time and why, thus enabling future recommendation and decisions to be informed by Idaho-specific workload data.

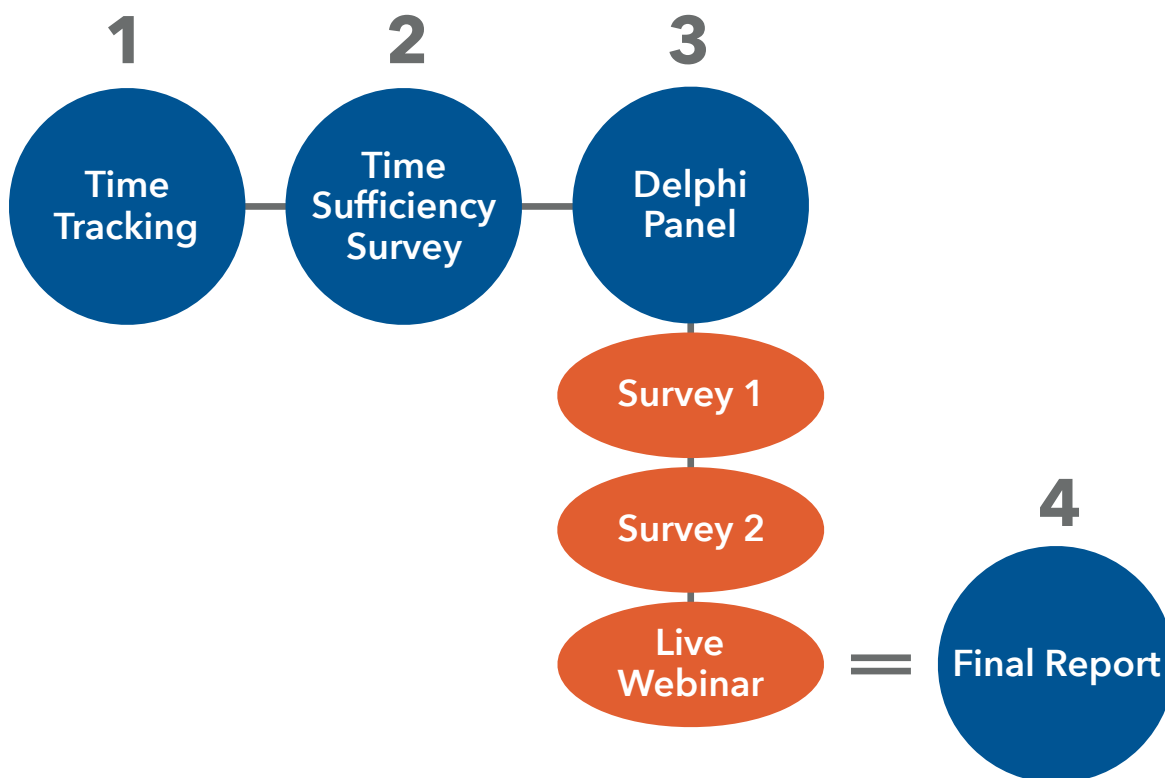
In addition to providing qualitative information regarding the public defense system in Idaho, this study engaged stakeholders whom the results may directly impact. In order to safeguard the integrity of this study, this was imperative as it gave attorneys agency and built trust for the policy-making process that may be impacted by the study's results. Therefore, the engagement of and the contributions from Idaho attorneys in this study were both critical. Over 150 attorneys provided their insight, experience and expertise throughout the course of the project.

The detailed methodology outlined below was determined to be best suited to the state of Idaho, and the consequential resources and limitations, as well as the stated goals of the project: *to provide Idaho-specific data for use in future efforts to set workload standards for the Idaho public defense system.*

The study was divided into four main components, listed below and depicted in Figure 2:

- 1) Time Tracking by public defense attorneys
- 2) Time Sufficiency Survey of public defense attorneys
- 3) Delphi Panel comprised of defense experts
- 4) Final Report

Figure 2: Flow of Idaho Public Defense Workload Study



DATA MANAGEMENT

The aforementioned methodologies were each carried out and raw data was collected. After the raw data was collected it was cleaned before it was analyzed. Cleaning the data is a necessary part of the research process as it enables the research team to detect and correct or remove any corrupt or inaccurate (incomplete, incorrect, inaccurate, irrelevant) parts of the data. Since this research is human subjects research, cleaning the data before analysis also ensured that any identifying information of study respondents was removed, helping to reduce potential bias in the analysis. It is important to note; a release of any raw data runs the risk that the data will be misinterpreted and/or taken out of context and utilized to answer questions outside the scope of the study and to target study respondents. Therefore, IPI has taken great care in managing the data.

Once the data was collected it was stored in password-protected, cloud-based, server-backed, collection software. Once the raw data was extracted from the software it was stored on the cloud in a password protected, server-backed, shared drive only accessible by the research team.

PARTICIPANT PROTECTION AND PRIVACY

It is of utmost importance in human subjects research to protect the privacy of those participating in a study. There were a number of protocols the IPI research team put in place for this particular research project. First, participants were informed that their participation was voluntary and they were also informed of the nature of the study and its purpose: to help provide Idaho-specific data that would be used to inform future public defense workload standards in Idaho. Participants consented to participate, and participants were permitted to drop out of the study for any reason, at any time.

To protect the privacy of study participants during data collection, participants were able to select where and when to participate in the web-based Time Tracking and survey portions of the study. This allowed them to enter data at work or at another location of their convenience. Because collection was done via web-based platforms, participants could enter data via a computer, tablet or smart phone.

As indicated in the Institutional Review Board applications for this study, the research team acknowledged certain risks to the participants including loss of confidentiality and identifiable links to individual participants. These risks were mitigated by only allowing the research team to have access to the raw data and, when applicable, de-identified raw data.

CONFLICTS OF INTEREST

As indicated in the Institutional Review Board application and to the Office of Sponsored Research at Boise State University, none of the research team members on this project had any relationship or equity interest with any institutions or sponsors related to this research that might present or appear to present a conflict of interest with regard to the outcome of the research. IPI has a commitment to provide sound, objective research for Idaho decision makers. Therefore, all data collection, analysis, and presentation is done with the utmost integrity.

DEFINITIONS

Before addressing each of the three main components of the methodology it is important to provide definitions of words/phrases utilized in describing the methodology.

CASE TYPES

The level of analysis used consistently throughout the study occurs at the “case” level. For this study, a “case” refers to a single indictment, although there could be more than one charge. Idaho defense attorneys participating in this study were asked to report and comment on a total of nine case types. The cases types were chosen with consideration for the legal landscape of Idaho.⁷ The case types included in this study (and their working definitions) are outlined in Appendix B.

CASE TASKS

The time dedicated to a case was then broken down into specific case tasks. Like the Missouri study,⁸ this research was focused on tasks performed by attorneys themselves (as opposed to support staff that their office may retain)⁹ and thus the aspects of an attorney’s work life that are most affected by caseloads. Additionally, since caseload standards will affect the work of attorneys and the breadth of their workload, it is logical to focus on tasks performed regularly and [almost] exclusively by attorneys. The 17 case tasks, and their definitions, as used throughout this case study are outlined in Appendix C.¹⁰

RESEARCH METHODS

As mentioned, there were four main components to this study. The first three relate to the gathering and analysis of data and the final component is the presentation of the data in this report.

PART 1: TIME TRACKING

Time Tracking provided empirical data regarding the current public defense environment in Idaho workload related to specific case types. This data was then used to estimate the time spent on specific tasks as well as the overall length of time from intake to disposition for certain case types. Time Tracking is a tool that has been used in several other workload case studies¹¹ and is an alternate way to gather information on the activity of attorneys, rather than relying on administrative data. Although administrative data from court systems and public defense offices offer accurate data for studies,¹² studies utilizing only administrative data lack a powerful component that could later impact any enacted change: attorney participation. By asking attorneys to participate in Time Tracking, attorneys were encouraged to engage in the process of assessing their caseloads and work expectations. It is important to note that Time Tracking is a snapshot; it captures activity within a clearly defined window of time and cannot be assumed to represent how the public defense environment in Idaho is, every season of the year, year after year.

As stated, studies across the country have used a number of Time Tracking methodologies to establish the time attorneys spend on cases. This study used a 12-week Time Tracking period.¹³ For cases where intake and disposition happened within the study period the actual time on a case was calculated. Estimates on case length were made for cases where intake and/or disposition occurred outside the Time Tracking period.

This study sought to determine the average amount of time, from intake to disposition, spent on public defense cases in Idaho. Therefore, the research only engaged Idaho public defense attorneys as participants throughout the study.

ATTORNEY RECRUITMENT

Prior to this study, the PDC contacted attorneys throughout the state to inform them of the study and encourage participation in all aspects of the research. These contacts were made via letters sent via email to attorneys and during open meetings that the PDC held across the state. Before the Time Tracking component of the study began, the PDC contacted every public defense attorney in Idaho via email and requested their participation. The PDC also created a page¹⁴ on the PDC's website to provide general information, answers to frequently asked questions, and the contact information of IPI so public defense attorneys, as well as the public as a whole, were informed of the study and knew how to contact the research team.

Once the study commenced, the IPI research team requested the PDC no longer be in one-on-one communication with Idaho public defense attorneys about the research project as such communication could unduly influence participation. However, the PDC did proceed to provide broadcast communication to attorneys to encourage participation. Additional encouragement for participation included a weekly drawing for legal text books. Attorneys who consistently tracked for all 12 weeks were entered into a drawing to win a trip to a public defense conference.

To recruit attorneys for each phase of the study, IPI utilized a Idaho public defense roster, provided by the PDC. At the time of the research, the roster contained a list of 290 attorneys.¹⁵ Although all attorneys were encouraged to participate in the study and utilize defenderData, some attorneys chose to use their own Time Tracking software while some opted out of the study.¹⁶

Attorneys who opted to use defenderData were provided with a login ID and a password by JusticeWorks. After logging in, the program presented attorneys with a form, requesting their consent to have their information recorded, which they were required to sign before entering any information. Attorney data was provided to IPI by JusticeWorks in the form of reports gleaned from defenderData.

ATTORNEY ENROLLMENT

Email invitations were sent by IPI directly to attorneys to enroll them in the Time Tracking portion of the study. Prior to this study, most public defense attorneys did not consistently use a program to track the time they spent on cases. Therefore, in order to ensure consistency in collection of the data, it was determined that a software program would need to be provided to all of the state's public defense attorneys. Attorneys were provided with free access to JusticeWorks' defenderData software, a web-based, full-featured case management system designed and built exclusively for indigent defense and tailored specifically by JusticeWorks for use in Idaho. Table 1 shows the types of cases that were tracked and the task codes utilized when entering time spent on a case.

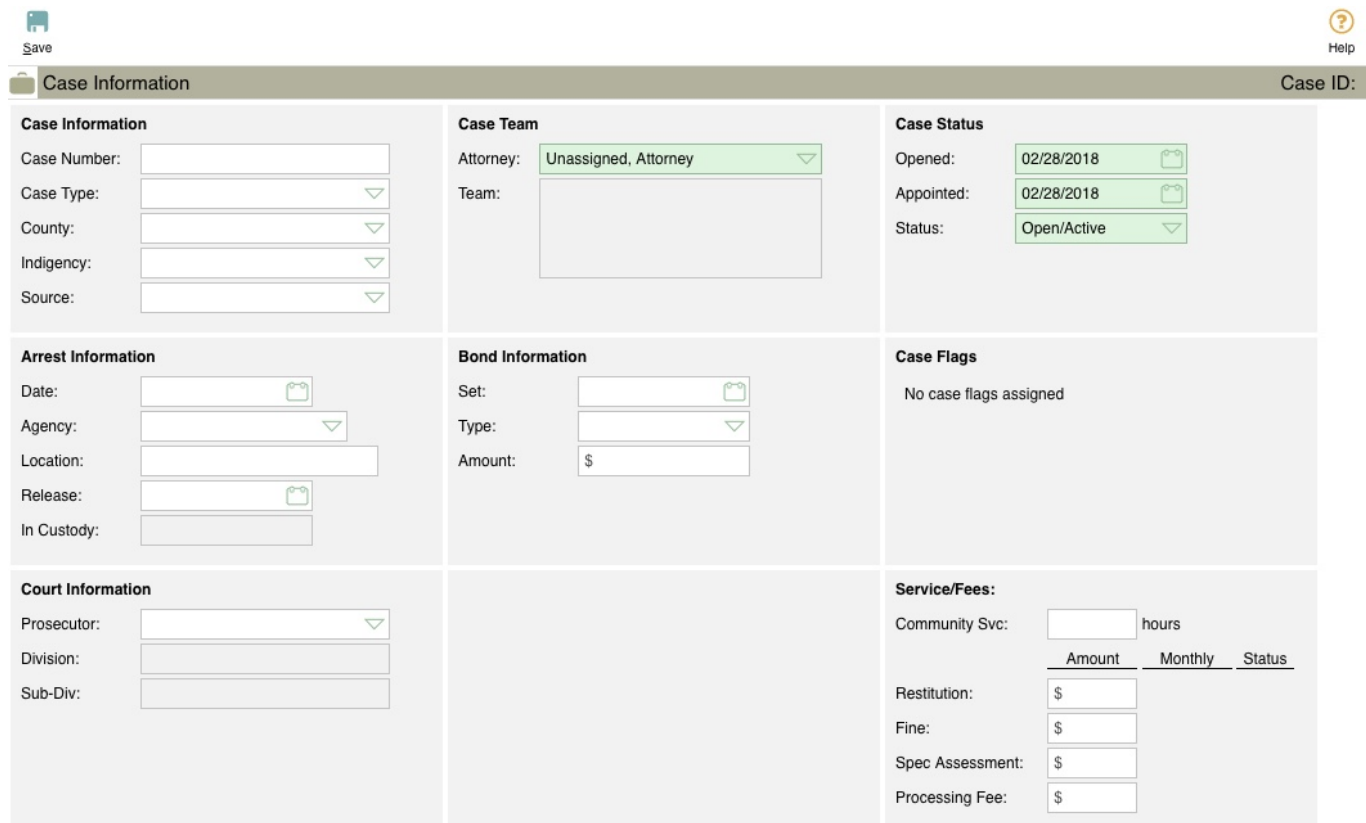
Table 1: Case Types and Case Tasks Codes for Time Tracking

Case Types		Case Tasks	
APP	Appeal	ADM	Administrative
BEC	Status Offenses (ARY/CHINS)	CC	Client Contact
CCV	Community Corrections Violation	CLR	Clerical
CHI	Child Rep Dependency	CT	Court
CMT	Civil Commitment/ITA	DD	Drafting Documents
CTO	Contempt - Other	DSC	Discovery
FEL	Felony	INV	Investigation
INF	Infraction	LR	Legal Research
JPV	Juvenile Probation Violation	LV	Leave
JVL	Juvenile	MG	Management
MIS	Misdemeanor	NG	Negotiation
NON	Non Charge Representation	SS	Social Services
OTR	Other	TP	Trial Prep
PAR	Parent Rep Dependency	TRN	Training
PRP	Personal Restraint Petition	TRV	Travel
PV	Probation Violation	CTPSC	Problem-Solving Court (In-Court)
SUP	Child Support Contempt	STPSC	Problem-Solving Court (Staffing)

DATA COLLECTION

To prepare for data collection, attorneys using defenderData were asked to participate in a one hour training webinar. Two such webinars were held on March 30th, 2017, and April 4th, 2017. Each webinar was recorded and made available to attorneys who had been unable to participate live. These webinars included information about the defenderData program, including the login and data entry processes. Below, Figures 3 and 4 provide screen shots of the case entry and time entry features of the program. In addition, a user guide was created for attorneys and made available on the PDC website.

Figure 3: Case Entry Page in defenderData

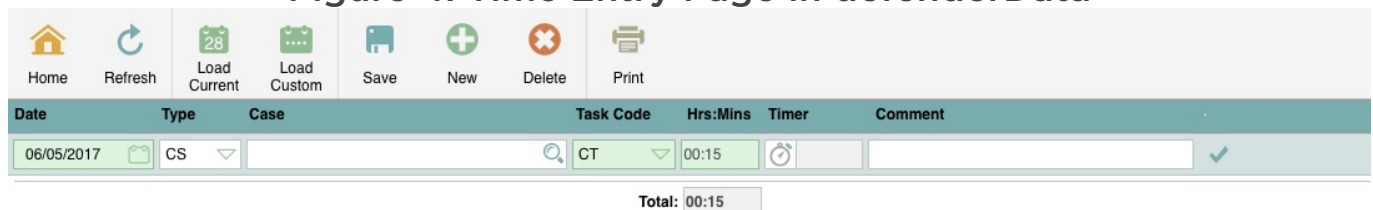


Save **Help**

Case Information **Case ID:**

Case Information Case Number: <input type="text"/> Case Type: <input type="text" value="▼"/> County: <input type="text" value="▼"/> Indigency: <input type="text" value="▼"/> Source: <input type="text" value="▼"/>	Case Team Attorney: <input type="text" value="▼"/> Team: <input type="text"/>	Case Status Opened: <input type="text" value="📅"/> Appointed: <input type="text" value="📅"/> Status: <input type="text" value="▼"/>																				
Arrest Information Date: <input type="text" value="📅"/> Agency: <input type="text" value="▼"/> Location: <input type="text"/> Release: <input type="text" value="📅"/> In Custody: <input type="text"/>	Bond Information Set: <input type="text" value="📅"/> Type: <input type="text" value="▼"/> Amount: <input type="text" value="\$"/>	Case Flags No case flags assigned																				
Court Information Prosecutor: <input type="text" value="▼"/> Division: <input type="text"/> Sub-Div: <input type="text"/>	Service/Fees: Community Svc: <input type="text"/> hours <table border="1"> <thead> <tr> <th></th> <th>Amount</th> <th>Monthly</th> <th>Status</th> </tr> </thead> <tbody> <tr> <td>Restitution:</td> <td><input type="text" value="\$"/></td> <td></td> <td></td> </tr> <tr> <td>Fine:</td> <td><input type="text" value="\$"/></td> <td></td> <td></td> </tr> <tr> <td>Spec Assessment:</td> <td><input type="text" value="\$"/></td> <td></td> <td></td> </tr> <tr> <td>Processing Fee:</td> <td><input type="text" value="\$"/></td> <td></td> <td></td> </tr> </tbody> </table>			Amount	Monthly	Status	Restitution:	<input type="text" value="\$"/>			Fine:	<input type="text" value="\$"/>			Spec Assessment:	<input type="text" value="\$"/>			Processing Fee:	<input type="text" value="\$"/>		
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Figure 4: Time Entry Page in defenderData



Home Refresh Load Current Load Custom Save New Delete Print

Date	Type	Case	Task Code	Hrs:Mins	Timer	Comment
06/05/2017 📅	CS ▼	<input type="text" value="🔍"/>	CT ▼	00:15	🕒	<input type="text" value="✓"/>

Total: 00:15

The Time Tracking section of the study took place in 2017, from April 24th to July 15th. During each week of Time Tracking, IPI received reports from JusticeWorks. If inconsistencies were detected in the data, IPI contacted the person who entered the data. After the 12 weeks of Time Tracking, JusticeWorks exported data for IPI. After cleaning the data, 10,170 eligible cases tracked by 138 attorneys representing 27 counties remained for use in calculating the descriptive statistics for use in the final workload study report.^{17,18}

Group 1

Cases in this group were opened and disposed during the 12 weeks of Time Tracking.

Group 2

Cases in Group 2 opened before Time Tracking and were disposed during Time Tracking. Time for cases in Group 2 was estimated by first calculating the actual time spent each week on the case during Time Tracking. This number was then added to the average time spent each week during Time Tracking multiplied by the weeks the case was open outside of Time Tracking.

Group 3

Cases in Group 3 made up the vast majority of cases in Time Tracking. These were cases that were not disposed during Time Tracking. They could have been opened either before or during the study. Time for Group 3 was estimated by first calculating the actual time spent each week on the case during Time Tracking. This number was then added to the average time spent each week on the case during Time Tracking multiplied by the median weeks cases of the same type were open in Groups 1 and 2. However, if the time tracked on a case was longer than the median calculation, then the actual weeks outside of Time Tracking were used as the multiplier. This methodology was recommended by the Texas study which also tracked time for a 12-week period. If the average length of time public defense cases take to dispose in Idaho was available, that data could be used as the multiplier rather than the median. While the time would still an estimate, it would lead to a more precise estimate of averages times. Although that data was not available for calculation in this study, the Idaho Supreme Court is actively working to produce that data for the PDC.

Group 1

Known case length
Known time spent
Case opened and
disposed during
Time Tracking

Group 2

Known case length
Unknown time spent
Case opened prior to
Time Tracking and
disposed during
Time Tracking

Group 3

Unknown case length
Unknown time spent
Case not disposed
by the end of
Time Tracking

RESULTS AND ANALYSIS

Each case was individually calculated based on their associated Group, as depicted in Figure 5, then descriptive statistics (distribution, central tendency, and dispersion) for each case type were calculated.

Figure 5: Calculation of Time for Each Group Type

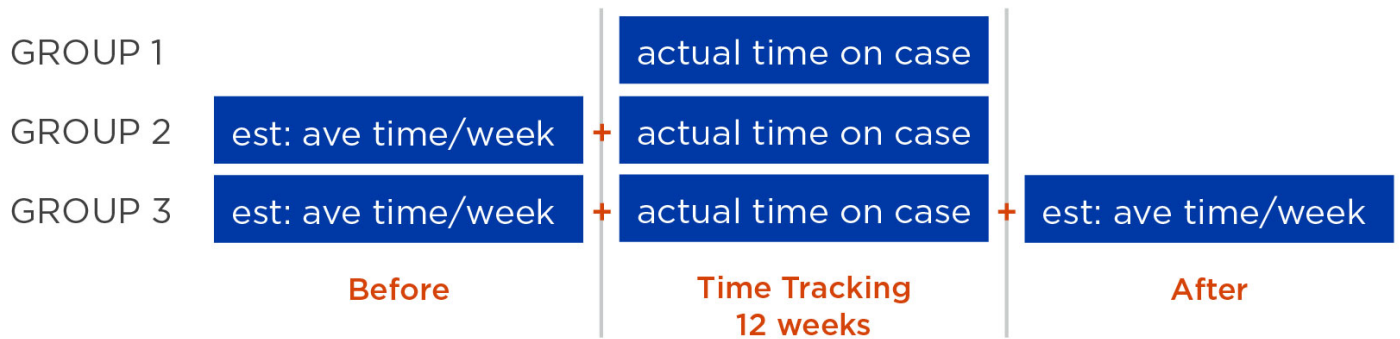


Figure 6 demonstrates the distribution of Groups for each case type. As mentioned, for each of the case types, Group 3 comprises the vast majority of cases.

Figure 6: Percentage of Time Tracking Cases by Group Type

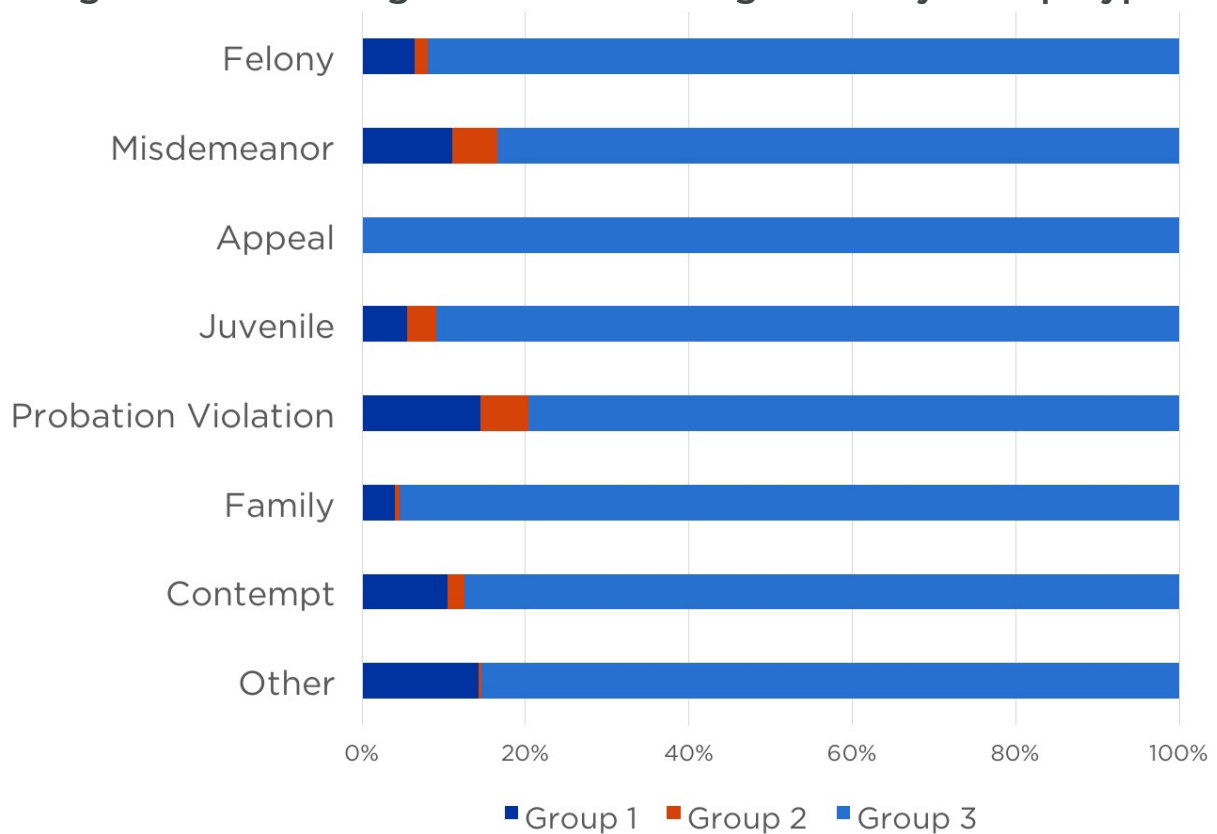


Table 2 outlines the estimated average time in hours that each case type took to dispose according to the data analyzed from Time Tracking. Felonies and Misdemeanors made up the majority of cases tracked during Time Tracking, which is reflective of Idaho's overall indigent defense case load. The standard deviation for each case type is also provided.

Table 2: Estimated Average Time per Case Type

Case Type	Total Cases	Estimated Average Time to Complete Case (hrs)	Standard Deviation
Felony	3336	3.8	10.6
Misdemeanor	4213	2.2	10
Appeal	9	*	*
Juvenile	1118	2.6	7.7
Probation Violation	633	2.2	6.4
Family	546	3.4	8.2
Contempt	48	4	8.3
Other	267	2.8	6.4

*Average time for appeal cases could not be calculated since only 9 appeal cases were recorded in Time Tracking and none of them were closed during the 12 week tracking period.

TIME TRACKING LIMITATIONS

Prior to this study, few public defense attorneys in Idaho were required to track how they spend their time on cases. Although training was provided for the Time Tracking portion of the study, one must recognize this was a new practice for attorneys, which may have limited their ability to accurately track their time.

A word of caution when interpreting the results: the aggregated data reported in this analysis present an overall average (mean) per case, as depicted in Figure 7. However, the mean alone does not provide enough information about the data. If the data were normally distributed and the distribution clustered around the mean, then presenting the mean in isolation would probably be sufficient.¹⁹ This data is not normally distributed or clustered around the mean, as indicated by another measure, standard deviation, which is necessary to fully interpret the story of the data. Standard deviation measures the dispersion of a set of data from its mean. The more spread apart the data, the higher the standard deviation. When there is a higher standard deviation relative to the mean one should also consult the range and distribution of data (see Appendix D).

To complement the quantitative results of the Time Tracking portion of the study, and better inform what was causing the large variation of time spent on cases within each case type, a survey

was used to gather more qualitative information about public defense attorneys and their perceptions of time necessary for specific tasks and for different types of cases.

PART 2: TIME SUFFICIENCY SURVEY

The Time Sufficiency Survey was used as a tool to gather both quantitative and qualitative data from public defense attorneys across Idaho. Previous studies from other states seeking to inform caseload standards surveyed defense attorneys to inquire how much time they perceived certain cases and tasks require for adequate defense to occur (See Appendix A – Bibliography). The Time Sufficiency Survey for this study was structured similarly to previous studies and acted as a way for attorneys to provide their insight on a number of matters: concepts of sufficient time, the availability of resources, and what effective counsel looks like in action.

The survey used in this project asked participating attorneys to select a numeric value for how much time, in their opinion, an attorney ought to spend on specific indigent defense case types in order to provide a client adequate and effective defense. The survey also asked attorneys to provide their perception of the average time required to complete specific tasks, if the task occurred, within certain case types. Attorneys were also provided an opportunity to explain their answers. This mixed methods approach adds great value to this research project as the survey connects the amount of time with the rationale of a practicing attorney who can provide valuable insight into their job and their experiences.

ATTORNEY RECRUITMENT AND ENROLLMENT

The Time Sufficiency Survey was sent via email to the entire roster²⁰ of current Idaho defense attorneys. The survey was sent directly to the attorneys, which provided each attorney with a unique link to the survey. The email also served as informed consent; by linking to the survey, attorneys consented to participate.

DATA COLLECTION

The survey was created and distributed via Qualtrics, a web-based survey software program. The survey remained in the field for just over two weeks²¹ after which the raw data was exported for cleaning (a process described in Time Tracking above) and analysis in IBM's SPSS, a statistical analysis software program. Attorneys were able to take the survey once, and they could choose to complete the survey either from a computer, smartphone, or tablet. The survey collected demographic information, attorneys' perceptions about time spent on specific tasks and specific cases, and provided space for open-ended comments. The survey implemented a logic feature that enabled attorneys to only answer questions regarding the types of cases they currently handled as part of their regular workload. This logic was built in to direct attorneys to more accurately estimate the time required for cases most familiar to them.²² Therefore, only portions of the total number of participating attorneys provided estimates of time for each case type, as illustrated in Appendix E.

RESULTS AND ANALYSIS

The response rate for the survey was 34%.²³ Demographic information was collected to indicate if respondents were representative of Idaho public defense attorneys. Analysis of the survey results showed 97 attorneys participated in the survey, and represented 29 of Idaho's 44 counties.²⁴ On average, attorneys practiced defense law for 12 years (the minimum time recorded was 1 year and the maximum was 38 years) and when asked to estimate what percentage of their workload was dedicated to Indigent Defense Cases, on average of 93% of an attorneys workload was dedicated to Indigent Defense.²⁵ Therefore, attorneys who chose to participate in this portion of the study had multiple years of experience practicing defense law and, at the time of the Time Sufficiency Survey, a significant portion of their workload was dedicated to indigent defense cases.



97 Idaho attorneys participated in the Time Sufficiency Survey



29

COUNTIES REPRESENTED

15 Average number of years practicing law

12 Average number of years practicing defense law

93% Average percentage of workload dedicated indigent defense

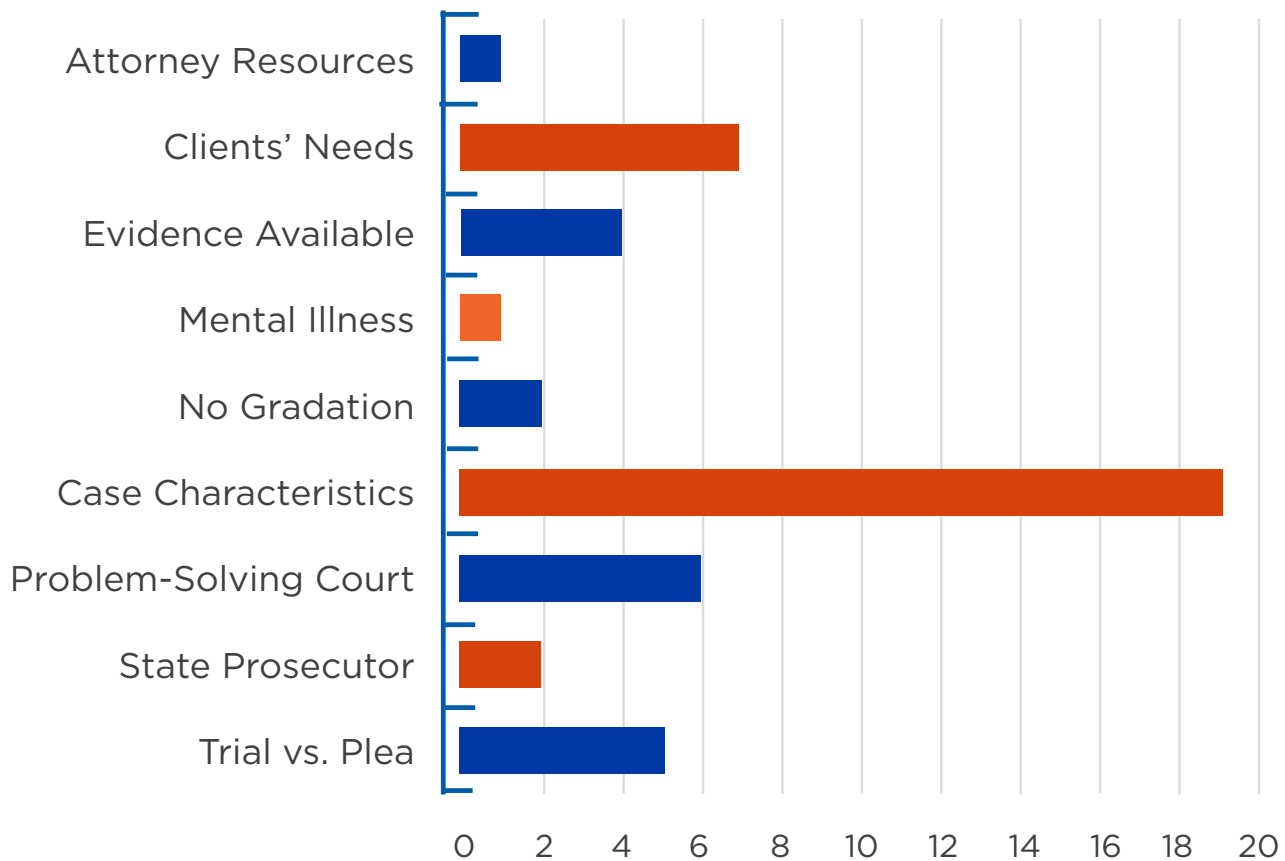
The Time Sufficiency Survey offered attorneys the opportunity to provide any additional comments they had regarding the survey through an open-ended comment box. During analysis, the comments made by the participating attorneys were reviewed and organized into reoccurring themes that described the content of comments and/or were specific points of reference for attorneys. Some comments addressed more than one theme and therefore were attributed to more than one theme. The comments were organized into these themes to analyze what are perceived to be the greatest issues and concerns for Idaho defense attorneys. The nine themes that the research team identified from the Time Sufficiency Survey comments are outlined in Table 3.

Table 3: Thematic Comments and Definitions

Theme	Definition
Attorney Resources	The expertise and experience that an attorney has for a particular type of case and/or area of law. Additionally, the office resources available to an attorney and the extent of their travel. Whether an office is public or private has a bearing here.
Client Needs	The needs of a client which can be impacted by a variety of things. E.g. their cognitive capabilities, their emotional state, their physical state, and their demands.
Evidence Available	The amount of legitimate evidence involved in a case.
Mental Illness	The mental wellbeing / mental health of a client.
No Gradation	The lack of gradation amongst offense types within the same classification of a case.
Case Characteristics	The multitude of characteristics that form and impact an entire case / anything that contributes to the situating of a case.
Problem-solving Court	Interaction with Problem-solving Court during a case.
State Prosecutor	The prosecutor assigned to the case.
Trial Vs. Plea	Whether a case goes to trial or not.

A total of 40 attorneys chose to provide us with comments during the Time Sufficiency Survey. The table below shows the distribution of comment content across the nine identified themes.

Figure 7: Distribution of Time Sufficiency Survey Comments



After analysis of the Time Sufficiency Survey results, the research was finalized by assembling a panel of expert defense attorneys across Idaho.

QUOTES FROM TIME SUFFICIENCY SURVEY RESPONDENTS

“Time required on a particular category of tasks seems to depend and vary widely based on the needs of a particular case”

“Law cases just don’t fit a template. Everyone is different with different demands and time needs”

“To try to represent a client properly it just takes as much time as it takes”

PART 3: DELPHI PANEL

The Delphi method, developed by the RAND Corporation, is an iterative decision-making process that integrates the opinions of a group of very knowledgeable and respected experts within a certain field.²⁶ The Delphi method has been used in several caseload studies across the US²⁷ to guide experts through a process that gradually leads the participants to a consensus regarding the time that is needed to provide an adequate defense to clients, for each case type and case task.

The Delphi method designed for this project consisted of three stages: two online surveys distributed via Qualtrics, the web-based survey software program also utilized in the Time Sufficiency Survey, and one interactive group discussion session hosted via ZOOM, a cloud platform for video and audio conferencing, chat and webinars that can be accessed across mobile, desktop, laptop and room conferencing systems.²⁸

ATTORNEY RECRUITMENT

In order to select a panel of defense experts for this study, IPI received lists of experienced public and private Idaho attorneys from the ACLU of Idaho and the Idaho Public Defense Commission. As a result, 62 attorneys were invited via email to participate as part of the Delphi Panel. The invited attorneys represented all judicial districts, both urban and rural counties, and provided a nearly equal mix of private and public defenders.

DELPHI ROUND 1

The first stage of the Delphi process was an online survey. An email was sent to the Delphi panel members with a link to the survey. The email also served as informed consent for panelists, by clicking the link to the survey attorneys consented to participate in the entire Delphi process. Of the 62 attorneys invited to participate in Delphi Round 1, 16 attorneys responded.²⁹

Similar to the Time Sufficiency Survey, the first Delphi survey asked for the input of the Delphi panel members on the time they perceived was needed to perform certain tasks, within certain case types (See definitions in Appendices B and C). The survey also asked Delphi members to estimate the percent of cases in which the task should occur. In order to provide qualitative data to support the quantitative data collected in the Time Sufficiency Survey, respondents were able to expand upon their time recommendations, add details to their responses, and offer any further comments they had regarding the survey via open ended comment sections.

DELPHI ROUND 2

Again, 62 attorneys were invited to participate via email, and 15 attorneys responded to participate in Delphi Round 2.³⁰ The second survey that was sent out to the Delphi panel members aggregated the results of the first Delphi survey and displayed the range of results, and the average response given for each question. Respondents were encouraged to review responses from Delphi Round 1 and then offer their re-estimations for time needed for each case task, within each case type. This process guided Delphi members to a consensus regarding time needed for case tasks.³¹ Tables 4 and 5 outline the results and the breakdown of responses to each case task within each case type from Time Sufficiency and Delphi Rounds 1 and 2 for Felonies and Misdemeanors. See Appendix F for a complete presentation of the remaining case types.

Table 4: Felony Case Task Averages

FELONY	Average perceived time required to complete task (hrs)		
	Time Sufficiency	Delphi Round 1	Delphi Round 2
Negotiation	2.43	1.41	1.29
Social Services	0.59	1.3	1.47
Travel	1.21	5.03	3.36
Client Contact	3.86	6.25	7.13
Discovery	3.37	4.15	4.32
Administrative	1.17	1.37	0.72
Investigation	2.97	5.65	6.86
Legal Research	9.05	7.1	8.93
Trial Prep	4.5	16.7	17.14
Clerical	1.13	2.25	2.36
Court	5.1	9.15	9.29
Drafting Documents	3.14	3.75	4.32
Problem-Solving Court (in Court)	4.5	17.4	12.7
Problem-Solving Court (Staffing)	4.41	12.6	18.7

Table 5: Misdemeanor Case Task Averages

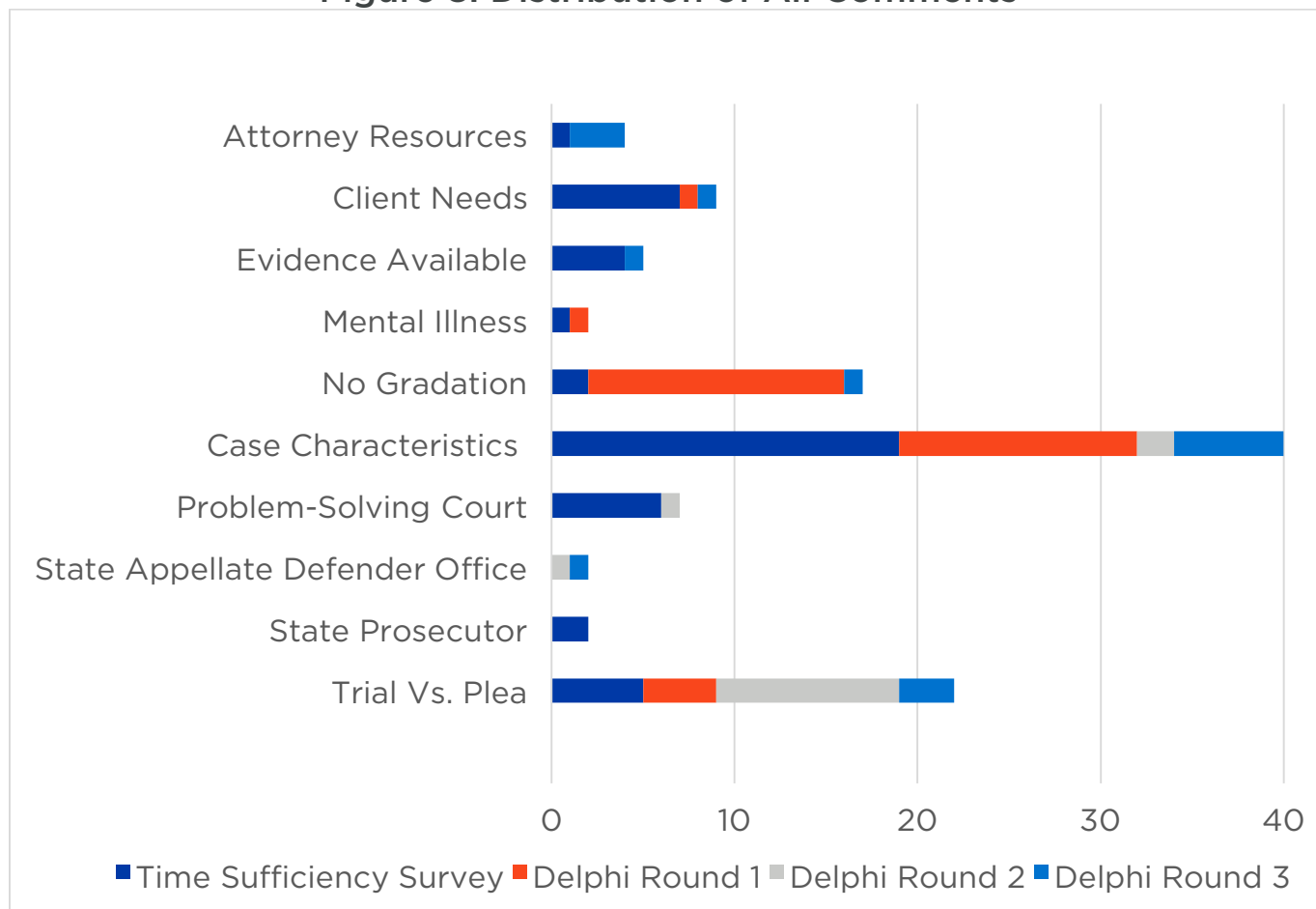
MISDEMEANOR	Average perceived time required to complete task (hrs)		
	Time Sufficiency	Delphi Round 1	Delphi Round 2
Negotiation	1.12	0.91 hrs	0.75
Social Services	0.49	1.29	0.76
Travel	0.92	5	2
Client Contact	1.7	2.78	2
Discovery	1.37	2.11	1.5
Administrative	0.99	0.77	0.34
Investigation	1.25	2.67	2.1
Legal Research	1.23	2.03	1.9
Trial Prep	4.82	7.07	6
Clerical	0.79	1.17	1.2
Court	2.28	4.17	2.1
Drafting Documents	1.5	2	1.3
Problem-Solving Court (in Court)	0.93	21	13.5
Problem-Solving Court (Staffing)	0.79	39	18.25

DELPHI ROUND 3

After the completion of Delphi Round 1 and Delphi Round 2, Delphi panelists were invited to an interactive online conference session that would allow deeper discussion into the answers that were recorded from both Delphi Rounds. Attorneys were asked to discuss the data from the Time Sufficiency Survey, and discuss differences, inconsistencies and themes in the data. The Delphi Panel also allowed attorneys the freedom to provide any feedback concerning the project as a whole, and or the larger legal environment in Idaho.

The Delphi Round 3 web conference was hosted through the online conference platform, ZOOM, and took place on Tuesday 29th August, MST 9am - 11am. Of the 62 attorneys invited to participate, 12 attorneys attended the call and provided their input. After the web conference was finished, first the conference recording was transcribed, and then the data was coded in a qualitative analysis software program, Nvivo. At the end of Delphi Round 3, there were 10 identified comment themes. The nine previously identified themes from the Time Sufficiency Survey and the addition of a new theme, State Appellate Court that arose during Delphi Rounds 2 and 3. Figure 8 depicts the overall thematic distribution of comments from Time Sufficiency and Delphi.

Figure 8: Distribution of All Comments



RESULTS AND ANALYSIS

Table 4 provides a complete summary of the estimated total time necessary to dispose cases from each round of the study.

Table 4: Summary of Estimated Total Case Time

SUMMARY OF ESTIMATED TIME BY CASE TYPE	Average time needed to complete entire case (hrs)	Average time needed to complete entire case (hrs)	Total time needed to complete case when all task averages are compiled (hrs)*		
	Time Tracking Study	Time Sufficiency Survey	Time Sufficiency Survey	Delphi Round 1	Delphi Round 2
Felony	3.8	14.77	38.52	64.11	67.19
Misdemeanor	2.2	5.42	18.46	31.97	21.95
Appeal	*	25.02	34.96	48.05	46.81
Juvenile	2.6	3.72	14.06	24.7	17.47
Family	3.4	11.74	23.79	23.75	27.41
Contempt	4	3.48	11.32	17.42	15.53
Other	2.8	3.46	10.39	11.25	9.67
Probation Violation	2.2	3.6	13.11	13.77	10.37

*Not all tasks occur in 100% of cases, therefore these numbers likely represent an overestimate of time

As Table 4 demonstrates, there is a wide range in perceived time cases require. As discussed previously, the ranges in recorded time for each case type during Time Tracking was considerable. There are a number of possible reasons for these variations as discussed below.

TIME SUFFICIENCY AND DELPHI PANEL LIMITATIONS

The participants in the Delphi Panel were expert defense attorneys. A Delphi-type panel analysis is designed to inform specific sets of recommendations rather than just aggregating data. As with any other analysis with small, non-representative samples, it can be prone to outliers, meaning that one or two respondents can affect the averages in ways that may not represent the entire panel. Therefore, the focus of the data from the Delphi panel should be on the qualitative data rather than the aggregated reports. For example, the Delphi panel was comprised of expert public defenders. As such, they are more experienced attorneys who may be handling more complex, and time-consuming cases than the average Idaho public defense attorney and, thus, their perception of time needed for specific cases and specific tasks may be impacted.

The Delphi process did not ask participants to estimate total time necessary to dispose cases; attorneys were requested to estimate the necessary time of each task and percentage of cases those tasks occur. It was anticipated that overall time required for cases would be discussed in detail during Delphi Round 3. However, during Round 3 attorneys tended to focus in on specific tasks. Therefore, the only calculation provided for total required time for cases from the Delphi

process is a sum of the average estimated time of each task for each case type. Since all cases do not include all tasks this is most likely an overestimate of total time perceived necessary for each case type.

For the Time Sufficiency Survey and Delphi Panel portions of the study it is important to note issues associated with recalling time spent, which attorneys most likely did to inform their responses. In each of these components of the study, attorneys were asked to use their past experiences to recall the average amount of time an attorney should spend on specific cases and specific tasks, thus providing an estimate. Previous research has indicated that when people are asked to estimate time dedicated to activities, they tend to overestimate.^{32,33,34} Attorneys' work is not always conducive to the linear flow of time and, in fact, their work tasks are often overlapping, intertwined and crisscrossing in nature, which offers an additional complication to the collection of recollection of time.³⁵

Finally, participation in this study was voluntary. Therefore, the resulting data collected may be impacted by selection bias of the respondents. This bias may include unwillingness to participate due to a perception that engagement in the study would take too much effort, a lack of understanding of the context of the study, or an unwillingness to share sensitive information.

CONCLUSION

As stated previously, the level of analysis used consistently throughout the study occurs at the “case” level. Recognizing that every case is different, and therefore time spent on a specific case type will vary, it is necessary to average the data. However, to ensure that the *variation in individual cases is represented*, the final analysis and this report includes not only the average but also the standard deviation, the range, and the minimum and the maximum indicated through data collected during Time Tracking. Despite this challenge, measuring time at the “case” level was essential because the report will be informing future caseload standards for the state of Idaho.

Results of the study indicate the wide range of time it not only takes for an attorney to defend a case, as indicated by the Time Tracking portion of the study, but also the wide range in opinion of the time needed for specific case types and specific tasks. Some of this range can be explained by the varying characteristics of cases. Essentially, each and every case an attorney handles is different in nature, even if it is the same case type. Thus, not all misdemeanors are the same just as not all felony cases are the same. Therefore, one cannot expect all cases of the same type to take the same amount of time. This study captures the work demands made of an Idaho defense attorney: each case demands an approach that is individualized, thorough and reactive to the entire situation surrounding a case. The qualitative components to this report indicate that attorneys are eager to preserve the ability to tailor their work to the needs of their clients and to uphold their oath under law. As the PDC and the state of Idaho move forward to set additional standards for indigent defense it is imperative this is kept in mind as they seek to provide effective representation for clients, empower and protect attorneys, and, finally, not overburden the system in both expense and expectation.

ENDNOTES

¹ U.S. Constitution amend. VI, U.S. Constitution amend. XIV.

² Magistrate judges assign the vast majority of Idaho's public defense cases to the state's public defense attorneys. These attorneys may be part of a countywide office, may be a contract attorney for counties without an office, or may be a conflict attorney. Conflict attorneys handled cases where contract or in-house attorneys have a conflict of interest.

³ Brown, Rubin. (2014). *The Missouri Project: A study of the Missouri Public Defender System and Attorney Workload Standards*. Carmichael, D., Clemens, A., Marchbanks, III, M., P., & Wood, S. (2015). *Guidelines for Indigent Defense Caseloads: A report to the Texas Indigent Defense Commission*. Public Policy Research Institute, Texas A&M University. Labriola, M., Farley, E. J., Rempel, M., Raine, V., & Martin, M. (2015). *Indigent defense reforms in Brooklyn, New York: An analysis of mandatory case caps and attorney workload*. New York: Center for Court Innovations. Luchansky, B. (2010). *The Public Defense Pilot Projects Washington State Office of Public Defense*. Olympia, WA: Looking Glass Analytics. Postlethwaite & Netterville. (2017). *The Louisiana Project: A study of the Louisiana Public Defender System and Attorney Workload Standards*. The American Bar Association.

⁴ Adams County, Bear Lake County, Benewah County, Bingham County, Blaine County, Boise County, Boundary County, Butte County, Camas County, Caribou County, Clark County, Clearwater County, Custer County, Elmore County, Franklin County, Fremont County, Gem County, Idaho County, Jefferson County, Jerome County, Latah County, Lemhi County, Lewis County, Lincoln County, Madison County, Nez Perce County, Owyhee County, Payette County, Shoshone County, Teton County, Valley County, and Washington County

⁵ Of these twelve counties eight have independent institutional offices (Ada, Bannock, Bonner, Bonneville, Canyon, Gooding, Kootenai and Twin Falls) while four have joint institutional offices (Minidoka and Cassia Counties share an institutional office and Power and Oneida Counties share an institutional office).

⁶ Idaho Code 19-864 requires all defending attorneys to submit an annual report by November 1 of each year to the board of county commissioners, the corresponding administrative district judge and the PDC.

⁷ The research team collaborated with the PDC and Justice Works select the case types based on recommendations and the limitations of the software employed for this study.

⁸ Brown, Rubin. (2014). *The Missouri Project: A study of the Missouri Public Defender System and Attorney Workload Standards*.

⁹ Not all Idaho indigent defense attorneys operate out of a county office that retains support staff. There were a number of conflict attorneys and contract attorneys participating in this study who have no access to support staff. Any contribution that support staff might have to an attorney's workload was accounted for by asking Idaho indigent defense attorneys to detail any additional support they had access to (this information was gathered during the Time Sufficiency Survey).

¹⁰ The case tasks chosen for the purpose of this study were shaped by both the legal landscape of Idaho and council from the PDC and Justice Works.

¹¹ Brown, Rubin. (2014). *The Missouri Project: A study of the Missouri Public Defender System and Attorney Workload Standards*. Carmichael, D., Clemens, A., Marchbanks, III, M., P., & Wood, S. (2015). *Guidelines for Indigent Defense Caseloads: A report to the Texas Indigent Defense Commission*. Public Policy Research Institute, Texas A&M University. Labriola, M., Farley, E. J., Rempel, M., Raine, V., & Martin, M. (2015). *Indigent defense reforms in Brooklyn, New York: An analysis of mandatory case caps and attorney workload*. New York: Center for Court Innovations. Luchansky, B. (2010). *The Public Defense Pilot Projects Washington State Office of Public Defense*. Olympia, WA: Looking Glass Analytics. Postlethwaite & Netterville. (2017). *The Louisiana Project: A study of the Louisiana Public Defender System and Attorney Workload Standards*. The American Bar Association.

¹² Labriola, M., Farley, E. J., Rempel, M., Raine, V., & Martin, M. (2015). *Indigent defense reforms in Brooklyn, New York: An analysis of mandatory case caps and attorney workload*. New York: Center for Court Innovations.

¹³ Due to the constraints of this study, 12 weeks was selected as an appropriate length for Time Tracking. Other studies with similar constraints tracked time for 12 weeks, see: Carmichael, D., Clemens, A., Marchbanks, III, M., P., & Wood, S. (2015). *Guidelines for Indigent Defense Caseloads: A report to the Texas Indigent Defense Commission*. Public Policy Research Institute, Texas A&M University.

¹⁴ <https://pdc.idaho.gov/idaho-workload-study/>

¹⁶ Half of the attorneys in Ada County's office selected to participate in the study and were contacted by IPI. All of Canyon County's public defenders utilized the county's in-house software. An additional 11 attorneys selected to utilize their own time tracking methodology. However, due to inconsistencies in tracking time and reporting, the Time Tracking data collected outside of defenderData was unable to be utilized in the study.

¹⁷ In some instances attorneys represented clients from more than one county.

¹⁸ Cases were eliminated if they: had ≤ 0 hours entered from 4/24/2017-7/15/2017, if closed dates were prior to 4/24/2017, if appointed dates were after closed dates (resulting in a case being open < 0 days), or if they were inactive,

¹⁹ Measures of central tendency (arithmetic mean, median, mode, standard deviation, etc.) are important tools for presenting data in an aggregated form. Together, measures of central tendency present a well-rounded picture of the data. However, when used in isolation, those same measures can distort the data and provide information that can be misleading. This report relies primarily on two measures: (1) mean, and (2) standard deviation.

²⁰ At the time of the survey, 290 attorneys were on the public defense roster. Although all attorneys surveyed provided indigent defense, some also provided private defense. This was due to the nature of Idaho's Public Defense system, which utilizes contract and conflict attorneys, in addition to salaried defense attorneys in institutional offices.

²¹ The Time Sufficiency Survey was in the field from August 1st, 2017 until August 16th, 2017. During the time that the survey was in the field, IPI sent three email reminders to attorneys to encourage their participation. On August 11th, the PDC sent an email to attorneys to remind attorneys of the active survey and to encourage their participation.

²² Accuracy to recall time spent on a task is reduced the further in the past a task occurred.

²³ A total of 298 emails were sent. 6 emails were duplicates and 6 emails bounced. This reduced our sample population to 286. 2 attorneys formally declined to participate, 27 attorneys only provided partial responses, and 2 attorneys started the survey and did not proceed: these responses were therefore excluded from data analysis to preserve the validity of the analysis. This resulted in 97 usable responses for analysis. We therefore had a response rate of 34%.

²⁴ Counties represented in the Time Sufficiency Survey include: Ada, Bannock, Caribou, Bonner, Boundary, Kootenai, Butte, Bonnerville, Camas, Jefferson, Canyon, Cassia, Clearwater, Elmore, Gem, Gooding, Idaho, Jerome, Latah, Lewis, Nex Perce, Owyhee, Payette, Washington, Shoshone, Teton, Twin Falls, Valley, Washington, and one respondents did not indicate their county affiliation.

²⁵ The minimum was 5 percent, and the maximum was 100 percentage. The standard deviation was 18.49.

²⁶ Adler, M., & Ziglio, E. (Eds.). (1996). *Gazing into the oracle: the Delphi method and its application to social policy and public health*. London: Jessica Kingsley Publishers.

²⁷ Labriola, M., Farley, E. J., Rempel, M., Raine, V., & Martin, M. (2015). *Indigent defense reforms in Brooklyn, New York: An analysis of mandatory case caps and attorney workload*. New York: Center for Court Innovations

²⁸ Other workload studies implementing the Delphi method hosted an in-person meeting for the final group discussion. An online live discussion was chosen for the Idaho study due to time (length of study and availability of attorneys) and financial constraints.

²⁹ 5 responses were partial and immediately excluded from analysis. Additionally, it is important to note that of the remaining 11 responses, not every participating attorney provided responses to every question for analysis but attorneys did progress through the entire survey (and therefore not excluded as a 'partial' response).

³⁰ 1 attorney opted out of the survey and was therefore excluded from analysis. An additional 5 attorneys only provided partial response and were therefore excluded from analysis. A total of 9 attorney responses were viable and used for analysis.

³¹ The guidance offered in the Delphi method minimizes bias from outside the panel because the information used for guidance is generated by the Delphi members themselves. This iterative process allows for the interaction of experts to produce results that are well-rooted within the community and legal environment of Idaho.

³² Pentland, W. E., Lawton, M. P., Harvey, A. S., & McColl, M. A. (Eds.). (2002). *Time use research in the social sciences*. Boston: Springer.

³³ Although breaking down the workweek in to specific tasks (microbehaviors) has been beneficial in some studies (see Pentland, W. E., Lawton, M. P., Harvey, A. S., & McColl, M. A. (Eds.). (2002). *Time use research in the social sciences*. Boston: Springer: p. 58), other studies have indicated that by doing so, the accumulation of tasks has led to workers reporting work weeks of over 168 hours (see Robinson, J. P., Martin, S., Glorieux, I., & Minnen, J. (2011). *The overestimated workweek revisited*. Monthly Labor Review, 134(6)).

³⁴ Participants are also more inclined to give "socially desirable responses" (Robinson, J. P., Martin, S., Glorieux, I., & Minnen, J. (2011). *The overestimated workweek revisited*. Monthly Labor Review, 134(6): p. 45). Meaning, that participants are aware of the social implications of how they record their time. Inferring an awareness of participants to the social, political and economic environment in which they are operating (reporting). This bias must be considered.

³⁵ Stinson, L.L. (1999). *Measuring how people spend their time: a time-use survey design*. Washington, D.C., U.S. Department of Labor, Bureau of Labor Statistics, Monthly Labor Review, 122(8).

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APPENDIX B: CASE TYPES AND DEFINITIONS

Case Type Name	Including	Definition
Felony		Representing an individual in a criminal case where possible imprisonment exceeds 1 year.
Misdemeanor		Representing a minor wrongdoing. An individual in a criminal case where possible confinement is 1 year or less.
Appeal		Seeking review of a decision from a higher court.
	Juvenile	Representing a child* charged with a criminal law violation.
Juvenile	Juvenile Probation Violation	Representing a child accused of violating their terms of violation.
	Status Offense	Representing a child in a "child in need of supervision" case.
Probation Violation		Representing an individual accused of violating their terms of violation
	Child Rep. Dependency	Representing a child in a civil action related to that child.
Family	Parent Rep. Dependency	Representing a parent in a civil action related to a child.
	Child Support Contempt	Representing an individual charged with contempt in court relating to a failure to pay child support.
Contempt		Representing an individual held in contempt of court.
Other	Other	Cases that do not fit into the other defined categories.
	Civil Commitment	Representing an individual in a case seeking to confine the individual civilly.
	Infraction	Representing an individual in a criminal case where no sentence of incarceration is possible.
	Non-charge Representation	Representing an individual who has not been charged with a criminal or civil law violation.

*In accordance with Idaho law (Idaho Statute 16-1602-10), a child is an individual under the age of 18.

APPENDIX C: CASE TASKS AND DEFINITIONS

Case Task Name	Definition
Administrative	Conducting tasks necessary for running an office. E.g. time keeping, billing, and docket management tasks.
Client Contact	Communicating (consulting and interviewing) with clients, in-person, on the phone or via written correspondence.
Clerical	Processing non case-related or non case-specific paperwork.
Court	Time spent in court.
Drafting Documents	Attorney time dedicated to actually drafting, typing or reviewing legal documents including motions and briefs.
Discovery	Time spent processing prosecution's disclosure, requesting, acquiring and reviewing records.
Investigation	Time spent investigating facts/preparing for and conducting depositions or witness interviews/consulting any experts including testimony preparation.
Legal Research	Case related legal research for arguments, motions or briefs / research into alternative sentencing resources, e.g., treatment programs.
Leave	Vacation time/sick time.
Management	Time spent by chief defenders managing attorneys or attorneys managing staff.
Negotiation	Time spent communicating, meeting and negotiating with prosecutors.
Social Services	Time spent seeking assistance from social services or communicating with a social worker.
Training	Time spent in continuing legal education.

APPENDIX D: TIME TRACKING DESCRIPTIVE STATISTICS

Felony

	N	Time (hours)					
		Minimum	Maximum	Range	Mean	Median	Std. Dev.
	3336	0.02	304.91	304.89	3.7681	1.83	10.63906
Group 1	216	0.08	92	91.92	2.58	1.6	7.02
Group 2	53	0.08	105.34	105.27	6.48	2.52	15.7
Group 3	3067	0.02	304.91	304.89	3.8	185	10.74

Misdemeanor

	N	Time (hours)					
		Minimum	Maximum	Range	Mean	Median	Std. Dev.
	4213	0.02	475.88	475.88	2.188	0.9333	10.00322
Group 1	466	0.08	28.21	28.13	1.15	0.6	2.11177
Group 2	229	0.03	475.88	475.84	10.7	1.8	40.22271
Group 3	3518	0.02	50.4	50.38	1.77	0.97	3.05

Appeal - N/A not enough data

Juvenile

	N	Time (hours)					
		Minimum	Maximum	Range	Mean	Median	Std. Dev.
	1116*	0.02	210.22	210.2	2.6219	1.3265	7.69247
Group 1	61	0.03	6.5	6.47	1.38	0.92	1.39834
Group 2	41	0.03	63.9	63.87	7.16	1.47	14.76555
Group 3	1014	0.02	210.22	210.2	2.51	1.35	7.44784

* 2 missing

Probation Violation

	N	Time (hours)					
		Minimum	Maximum	Range	Mean	Median	Std. Dev.
	633	0.02	98.08	98.05	2.1768	0.9536	6.35192
Group 1	92	0.08	6.75	6.67	1.06	0.66	1.13168
Group 2	37	0.14	82.08	81.94	5.21	1.58	13.92842
Group 3	504	0.02	98.08	98.05	2.16	0.97	5.97322

Family

	N	Time (hours)					
		Minimum	Maximum	Range	Mean	Median	Std. Dev.
	546	0.07	114.51	114.44	3.4498	1.5057	8.233
Group 1	22	0.5	7.2	6.7	1.66	1.15	1.46254
Group 2	3	0.69	61.32	60.63	22.3	4.9	33.85619
Group 3	521	0.07	114.51	114.44	3.42	1.53	8.02237

Contempt

	N	Time (hours)					
		Minimum	Maximum	Range	Mean	Median	Std. Dev.
	48	0.1	37.7	37.6	3.9882	0.665	8.26065
Group 1	5	0.36	2	1.64	1	0.83	0.6668
Group 2	1	20.62	20.62	0	20.62	20.62	n/a
Group 3	42	0.1	37.7	37.6	3.95	0.5	8.38699

Other

	N	Time (hours)					
		Minimum	Maximum	Range	Mean	Median	Std. Dev.
	267	0.03	75.5	75.52	2.7515	1.08	6.43562
Group 1	38	0.03	6	5.97	1.19	0.59	1.53735
Group 2	1	0.41	0.41	0	0.4114	0.4114	n/a
Group 3	228	0.08	75.55	75.47	3.02	1.2	6.90228

APPENDIX E: TIME SUFFICIENCY SURVEY ATTORNEY EXPERTISE BY CASE TYPE

Case Type	Felony	Misdemeanor	Appeal	Juvenile	Probation Violations	Family	Contempt	Other
No. of Attorneys	70	61	23	26	80	28	34	27
Percentage of Total N	72.16%	62.89%	23.71%	26.80%	82.47%	28.87%	35.05%	27.84%
Total N: 97								

APPENDIX F: CASE TASK AVERAGES

APPEAL	Average perceived time required to complete task (hrs)		
	Time Sufficiency	Delphi Round 1	Delphi Round 2
Negotiation	0.28	1	1
Social Services	0.12	0	0
Travel	0.62	5.28	4.3
Client Contact	1.46	1.88	1.38
Discovery	4.37	6.6	5.6
Administrative	1.82	1.79	0.95
Investigation	2.03	5.33	3.2
Legal Research	8.18	9.83	11.4
Trial Prep	2.47	2.5	2.63
Clerical	0.99	1.63	1.3
Court	1.37	1.21	1.25
Drafting Documents	11.26	11	13.8

JUVENILE	Average perceived time required to complete task (hrs)		
	Time Sufficiency	Delphi Round 1	Delphi Round 2
Negotiation	0.84	0.89	0.65
Social Services	0.67	1.36	1
Travel	0.82	1.3	0.77
Client Contact	1.74	2.43	1.98
Discovery	1.03	2.17	1.36
Administrative	0.64	0.91	0.3
Investigation	1.08	1.71	1.4
Legal Research	1.09	2.71	1.8
Trial Prep	2.66	5.53	3.7
Clerical	0.8	1.29	1.21
Court	1.71	2.36	2.2
Drafting Documents	0.98	2	1.1

PROBATION VIOLATION	Average perceived time required to complete task (hrs)		
	Time Sufficiency	Delphi Round 1	Delphi Round 2
Negotiation	1.02	0.8	0.63
Social Services	0.48	1.13	0.95
Travel	0.69	1.19	0.88
Client Contact	2.08	1.84	0.95
Discovery	1.21	1.03	0.83
Administrative	1.13	0.65	0.37
Investigation	0.89	0.91	0.88
Legal Research	0.89	1.11	1.1
Trial Prep	1.04	1.25	1.08
Clerical	0.57	0.89	0.43
Court	2	1.69	1.37
Drafting Documents	1.11	1.28	0.9

FAMILY	Average perceived time required to complete task (hrs)		
	Time Sufficiency	Delphi Round 1	Delphi Round 2
Negotiation	1.08	1.25	1.25
Social Services	1.19	2	1.63
Travel	0.97	0.8	1
Client Contact	3.73	3.75	5.5
Discovery	2.26	3.3	3.63
Administrative	1.1	0.56	0.38
Investigation	1.4	1.13	1.05
Legal Research	1.12	1.33	1.33
Trial Prep	3.76	2.25	4.13
Clerical	1.23	1.05	1
Court	4.37	3	3.63
Drafting Documents	1.58	3.3	2.88

CONTEMPT	Average perceived time required to complete task (hrs)		
	Time Sufficiency	Delphi Round 1	Delphi Round 2
Negotiation	0.79	1	1
Social Services	0.53	0.25	0.4
Travel	0.61	0.5	0.75
Client Contact	1.26	2	2.13
Discovery	0.91	1	1
Administrative	0.63	0.75	0.3
Investigation	0.69	0.75	0.75
Legal Research	0.67	1.17	1.13
Trial Prep	2.43	5.67	3.63
Clerical	0.68	1	0.81
Court	1.25	2	2.38
Drafting Documents	0.87	1.33	1.25

OTHER	Average perceived time required to complete task (hrs)		
	Time Sufficiency	Delphi Round 1	Delphi Round 2
Negotiation	0.59	0.67	0.61
Social Services	0.59	0.25	0.77
Travel	0.69	1.25	0.88
Client Contact	1.31	1	1
Discovery	0.97	1	0.75
Administrative	0.84	0.58	0.38
Investigation	0.71	0.67	0.68
Legal Research	0.66	1.33	0.88
Trial Prep	1.69	1.67	1.5
Clerical	0.62	0.83	0.69
Court	1.06	1.17	0.88
Drafting Documents	0.66	0.83	0.75

This report was prepared by the Idaho Policy Institute at Boise State University.

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AGENDA
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Thursday, January 17, 2019

SUBJECT	DESCRIPTION	PRESENTER
<u>RS26427C1</u>	Developmental disability defendant, required evaluation process	Blake Brumfield, Dept. of Health & Welfare
<u>RS26516</u>	Technical change to "cooling off" period in divorce cases	Jason Slade Spillman, Administrative Office of the Courts/Idaho Supreme Court
<u>RS26517</u>	Terminology changes relating to alcohol/substance abuse / DUI	Jason Slade Spillman
<u>RS26518</u>	Transcription of oral statements relating to search warrants	Jason Slade Spillman
<u>RS26519</u>	Updates terminology relating to sexual offender registration	Jason Slade Spillman
<u>RS26559</u>	Rule 76, House Committee on Ethics	Rep. Dayley

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Dayley	Rep Ehardt	Rep Troy
Vice Chairman Chaney	Rep Scott	Rep Young
Rep Kerby	Rep Goesling	Rep Gannon
Rep Amador	Rep Hartgen	Rep McCrostie
Rep Zito	Rep Marshall	Rep Wintrow
Rep Zollinger	Rep Ricks	Rep Davis

COMMITTEE SECRETARY

Wendy Carver-Herbert
Room: EW56
Phone: 332-1127
email: hjud@house.idaho.gov

MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Thursday, January 17, 2019

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis

**ABSENT/
EXCUSED:** Representative Troy

GUESTS: Blake Brumfield, Cam Gilliland, Miren Unsworth, Department of Health & Welfare; Barry Wood, Jason Spillman, Idaho Supreme Court; Ruby Mendez-Mota, ACLU-ID

Chairman Dayley called the meeting to order at 1:31 p.m.

Chairman Dayley reviewed committee procedures for RS introduction hearings.

RS 26427C1: **Blake Brumfield**, Program Manager of the Developmental Disability Crisis Prevention and Court Services program in the Division of Family & Community Services presented the RS. This proposed legislation requires the use of a specially trained three-member developmental disability team comprised of a social worker, psychologist and physician when evaluating developmentally disabled defendants. This can result in better outcomes by arriving at a more accurate opinion on competency to stand trial. The proposed bill was shared with and supported by a broad range of stakeholders.

MOTION: **Rep. McCrostie** made a motion to introduce **RS 26427C1. Motion carried by voice vote.**

RS 26516: **Jason Spillman**, Legal Counsel, Administrative Office of the Courts, Idaho Supreme Court presented **RS 26516**. It along with other proposed legislation addresses the requirement of the Courts under Section 25 article 5 of the Constitution to identify and correct defects in the law. This RS changes the "cooling off" period prior to final decree in divorce proceedings from twenty (20) days to twenty-one (21). This is consistent with ongoing efforts to standardize the filing periods across the Courts to seven (7) day increments.

MOTION: **Rep. Wintrow** made a motion to introduce **RS 26516. Motion carried by voice vote.**

RS 26517: **Jason Spillman**, Legal Counsel, Administrative Office of the Courts, Idaho Supreme Court presented **RS 26517**, which proposes to amend a DUI penalty bill. This respectively replaces the terms "alcohol evaluation facility" and "substance abuse" with the terms "substance use disorders service provider" and "substance abuse disorder". The terms are no longer used and the revisions conform with language used by the Department of Health and Welfare.

MOTION: **Rep. Kerby** made a motion to introduce **RS 26517. Motion carried by voice vote.**

RS 26518: **Jason Spillman**, Legal Counsel, Administrative Office of the Courts, Idaho Supreme Court presented **RS 26518**. It pertains to section I.C. §19-4404, which requires oral statements for obtainment of search warrants to be recorded and transcribed. However, transcribed statements are rarely used and it results in extensive cost to the counties. This amends the code to ensure preservation of the recordings, but allows for transcription "if requested".

MOTION: **Rep. Davis** made a motion to introduce **RS 26518. Motion carried by voice vote.**

RS 26519: **Jason Spillman**, Legal Counsel, Administrative Office of the Courts, Idaho Supreme Court presented **RS 26519**, which removes references to the term "sexual" from sex offender registration statutes relating to the crime of forcible penetration by use of a foreign object. The word "sexual" was removed in 2018 from I.C. §18-6608, which governs crimes of forcible penetration by use of a foreign object. This change aligns the language in that statute.

MOTION: **Rep. Chaney** made a motion to introduce **RS 26519. Motion carried by voice vote.**

Chairman Dayley turned the gavel over to **Vice Chairman Chaney**.

RS 26559: **Rep. Dayley** presented the **RS 26559**. The Legislature didn't have an ethics rule before 1990, and it was last amended in 2013. With the adoption of the Respectful Workplace policies, the Speaker asked the Chief Clerk of the House to review the Ethics Committee rule to see if anything needed to be done to support the new policies. At the same time, it opened the opportunity to look at the rule to determine if anything else needed to be updated or changed. The proposed resolution repeals and replaces House Rule 76, and more specifically supports the workplace policy, and includes several other key provisions that update the rule. The selection process of the committee has not changed. He provided an example of the type of technical changes that were made in the rule.

MOTION: **Rep. Gannon** made a motion to introduce **RS 26559. Motion carried by voice vote.**

Vice Chairman Chaney turned the gavel over to **Chairman Dayley**.

Chairman Dayley thanked the committee for their diligence in preparing for the meeting and asked for feedback on the electronic committee format.

Comments from the committee included positive support for receiving documents ahead of time in OneDrive to review and prepare for the meeting; a request to see a version of the proposed House Resolution that highlights what was repealed or changed; and desired capability to digitally write on the electronic documents since they are replacing the paper versions. **Chairman Dayley** stated we would look into the requests and get back with the Committee at a later date.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 1:55 p.m.

Representative Dayley
Chair

Wendy Carver-Herbert
Secretary

AGENDA
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Monday, January 21, 2019

SUBJECT	DESCRIPTION	PRESENTER
	Presentation / Committee Informational Briefing:	
	Legislative Budget Book: Department of Corrections, Public Defense Commission and Idaho Courts	Paul Headlee and Jared Hoskins, LSO / Budget & Policy Analysis
<u>HR 1</u>	Rule 76, House Committee on Ethics	Rep. Dayley

COMMITTEE MEMBERS

Chairman Dayley

Vice Chairman Chaney

Rep Kerby

Rep Amador

Rep Zito

Rep Zollinger

Rep Ehardt

Rep Scott

Rep Goesling

Rep Hartgen

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Rep Wintrow

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COMMITTEE SECRETARY

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Room: EW56

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MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Monday, January 21, 2019

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis

**ABSENT/
EXCUSED:** Representative Kerby

GUESTS: Barry Wood, Idaho Supreme Court; Rep. Pricilla Giddings

Chairman Dayley called the meeting to order at 1:32 p.m.

Chairman Dayley reviewed options for using the electronic committee folders.

Paul Headlee, Division Manager, Legislative Services Office (LSO)/Budget and Policy Analysis, presented to the Committee a state level overview and detailed how the state's budget is built. He said the Budget Analysis office is neutral and lays out the Governor's budget on one side and the agency's budget on the other side. He also reviewed the Governor's recommendations and said the Joint Finance and Appropriations Committee (JFAC) looks at a three-year window against six decision making benchmarks.

In answer to committee questions regarding citizen involvement in the budget process, **Mr. Headlee** stated the LSO Audit Division works with agencies who take public comment to ensure funds are being spent according to statute. He further explained that the stabilization funds were invested by the State Treasurer's office.

Jared Hoskins, Principal Analyst, LSO / Budget and Policy Analysis, stated there are seven agencies assigned to Law and Justice, but due to time constraints he only presented a budget overview of the Courts; Department of Corrections and Public Defense Commission. In answering Committee questions, Mr. Hoskins reviewed the timeline and process for developing and refining the budget. He described how and when requests come in from the agencies and when the Governor provides his budget recommendations. He said not all line items requested from the agencies are recommended by the Governor.

Chairman Dayley reiterated to the Committee that the Budget Office is available any time to answer questions. The Speaker has asked the Committee's to review germane agency budgets so they are more informed when they are presented on the Floor of the House. In answer to a question from the Committee, Chairman Dayley said a budget bill can be amended just like any other bill, but the process is a little different.

Chairman Dayley turned the gavel over to **Vice Chairman Chaney**.

HR 1:

Chairman Dayley presented **HR 1** and reviewed the history of how Rule 76 came to be. Prior to 1990 when the rule was implemented, the only source for dealing with ethics matters in the Senate and House was the Idaho Constitution under Article III, section 11. This is an open ended process that says a member could be expelled for good cause upon two-thirds majority vote. He stated Rule 76 was last updated in 2013. He explained the adoption of the Legislature's Respectful Workplace policy prompted the need for a process to refer and manage complaints that came through the Respectful Workplace process to the Ethics Committee. As a result, the Chief Clerk of the House was charged with the responsibility to see if anything needed to be done to support the new policy and identify anything else that needed to be updated or changed. **Chairman Dayley** said phase one and two of the Ethics Committee selection process was not changed, and the Ethics Committee for this Legislative session was established by the twelfth day, as required.

Concerns were expressed by committee members regarding the recordkeeping and storage of complaints brought before the Ethics Committee and if those complaints could be used for political purposes. **Chairman Dayley** explained that the Chief Clerk of the House contacted several other states to see how their legislatures addressed ethics and Respectful Workplace violations. **Carrie Maulin**, Chief Clerk of the House, answered questions saying the Respectful Workplace policy has provisions in place for recordkeeping which is retained in a personnel file. If a Respectful Workplace claim were moved to the Ethics Committee, the Ethics Committee could establish a schedule for records retention.

In answer to committee questions, **Chairman Dayley** stated the Respectful Workplace policy covers more than legislators, but currently there is not a clearly defined way in Rule 76 to accept and address Respectful Workplace complaints against legislators. This is why the ability to forward complaints to the Ethics Committee needed to be established. He said the Ethics Committee can establish rules of how the committee operates, independent of the Respectful Workplace Policy Committee.

In answer to committee questions regarding funds available for managing Ethics Committee claims, **Chairman Dayley** said it is within the legislative appropriations for the Speaker to request those funds and to have those funds available for Committee purposes.

More concerns by the committee were raised regarding the Ethics Committee being able to initiate a complaint and also being able to judge the complaint and provide a punishment, if necessary. Concerns were also raised regarding the complainant being able to know who lodged a complaint against them, and what notification is given to the Speaker about a complaint sent to the Ethics Committee. **Ms. Maulin** said the language in the rule was chosen to reflect civil procedures, not criminal procedures.

MOTION:

Rep. Zollinger made a motion to **HOLD HR 1** for time certain, February 5, 2019.

Rep. Giddings reviewed several of her concerns with the legislation, including the vagueness of language for a complex issue, and asked if this rule was compared and standardized with the Senate's rule. She also addressed how the rule does not reference the procedure if the Ethics Committee violates the process and how this rule seems to consolidate power and gives the Ethics Committee the ability to be the enforcement arm of the legislature. She also stated concerns with the ability of the Committee to make a public statement, but the accused being retained under strict confidentiality. She spoke **in support** of the motion to hold the resolution for further review.

In closing, **Chairman Dayley** said the Committee brought forward good points. The current Ethics Committee rule is in place, and if a Respectful Workplace complaint came through, it would go through the Speaker, who would refer it to the Ethics Committee. He said this is not a perfect process and they may not have the ability to create a perfect rule, but it is a place to start. He did speak **in support** of holding the resolution for further review.

**VOTE ON THE
MOTION:**

Motion carried by voice vote.

Vice Chairman Chaney turned the gavel over to **Chairman Dayley**.

Chairman Dayley requested those who would like to review the legislation and provide further comment to let him know.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 3:55 p.m.

Representative Dayley
Chair

Wendy Carver-Herbert
Secretary

AGENDA
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Wednesday, January 23, 2019

SUBJECT	DESCRIPTION	PRESENTER
<u>RS26453</u>	Public Defense Commission Terminology Revision / Technical Correction	Kathleen Elliott, Public Defense Commission
<u>RS26490C1</u>	Children / Genital Mutilation Felony	Representative Troy
	Courts 101 Presentation	Sara Thomas, Administrative Office of the Courts / Idaho Supreme Court
<u>H 30</u>	Developmental disability defendant, required evaluation process	Blake Brumfield, Dept. of Health & Welfare
<u>H 31</u>	Technical change to "cooling off" period in divorce cases	Jason Slade Spillman, Administrative Office of the Courts / Idaho Supreme Court
<u>H 32</u>	Terminology changes relating to alcohol / substance abuse/ DUI	Jason Slade Spillman
<u>H 33</u>	Transcription of oral statements relating to search warrants	Jason Slade Spillman
<u>H 34</u>	Terminology updates / sexual offender registration	Jason Slade Spillman

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Dayley	Rep Ehardt	Rep Troy
Vice Chairman Chaney	Rep Scott	Rep Young
Rep Kerby	Rep Goesling	Rep Gannon
Rep Amador	Rep Hartgen	Rep McCrostie
Rep Zito	Rep Marshall	Rep Wintrow
Rep Zollinger	Rep Ricks	Rep Davis

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Wednesday, January 23, 2019

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis (Thea)

**ABSENT/
EXCUSED:** Representative Gannon

GUESTS: Sara Thomas, Barry Wood, Jason Spillman, Idaho Supreme Court; Blake Brumfield, Miren Unsworth, Cam Gilliland, Department of Health & Welfare; Kathleen Elliott, Nichole Devaney, Public Defense Commission; Tony Geddes, ALPD; Jared Larsen, Governor's Office

Chairman Dayley called the meeting to order at 1:31 p.m.

MOTION: **Rep. Marshall** made a motion to approve the minutes of the January 17, 2019 meeting. **Motion carried by voice vote.**

Chairman Dayley thanked the Committee for their questions and concerns on **HR 1** and he will work informally with members to address changes.

RS 26453: **Kathleen Elliott**, Executive Director, Public Defense Commission, presented the RS which changes the terms "grant" to "financial assistance" and "application" to "compliance proposal". It will have no financial impact and will not alter the budget or procedures for distributing funds for indigent defense. It was requested by the counties as a way to assure funding so they can provide constitutionally required indigent defense services.

MOTION: **Rep. Chaney** made a motion to introduce **RS 26453**. **Motion carried by voice vote.**

RS 26490C1: **Chairman Dayley** said **RS 26490C1** was withdrawn from the Committee by the sponsor.

Sara Thomas, Administrative Director of the Courts. Provided an overview of the Idaho Court system by outlining the responsibilities and differences of the various court systems.

H 30: **Blake Brumfield**, Program Manager of Developmental Disability Crisis Prevention and Court services, Department of Health and Welfare presented **H 30**. This bill establishes a procedure for evaluating defendants suspected of having developmental disabilities through the appropriate and safe setting needed to determine whether they can stand trial. It requires evaluation by a multi-disciplinary team of experts who are appointed by the Department of Health and Welfare. Mr. Brumfield provided an example of a case where a defendant was not properly evaluated and was placed in a situation where he was a serious risk to others. The bill intends to minimize this type of situation from happening. The bill was reviewed by key stakeholders with no major objections.

In response to a question from the Committee, **Mr. Brumfield** stated the Disability Rights of Idaho Group had some initial concern with the definition of developmental disability in the bill, but once they found out it was already defined in existing law, they withdrew their opposition.

- MOTION:** **Rep. Ricks** made a motion to send **H 30** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Ricks** will sponsor the bill on the floor.
- H 31:** **Jason Spillman**, Legal Counsel, Administrative Office of the Courts, presented **H 31**. This bill, along with the following three bills, are generally defined as defects bills, and they propose to fix those defects in various ways. This bill is the Court's effort to resolve the confusing time periods used throughout the court system by setting time frames in seven (7) day increments. This changes the "cooling off" period prior to final decree in divorce cases from twenty (20) days, to twenty-one (21) days.
- MOTION:** **Rep. McCrostie** made a motion to send **H 31** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. McCrostie** will sponsor the bill on the floor.
- H 32:** **Jason Spillman**, Legal Counsel, Administrative Office of the Courts, presented **H 32** which updates terminology used under the DUI statute. This respectively replaces the terms "alcohol evaluation facility" and "substance abuse" with the terms "substance use disorders service provider" and "substance abuse disorder". The terms are no longer used and the revisions conform with language used by the Department of Health and Welfare.
- MOTION:** **Rep. McCrostie** made a motion to send **H 32** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Davis** will sponsor the bill on the floor.
- H 33:** **Jason Spillman**, Legal Counsel, Administrative Office of the Courts, presented **H 33** relating to oral statements for obtainment of search warrants. Producing a written affidavit isn't always practical due to time frames, such as emergencies or late night obtainments. Therefore, oral affidavits are used, but they still require that the oral statement be transcribed. The written statements are seldom used and are costly. This amends the law to provide for transcription, only if requested.
- MOTION:** **Rep. Hartgen** made a motion to send **H 33** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Hartgen** will sponsor the bill on the floor.
- H 34:** **Jason Spillman**, Legal Counsel, Administrative Office of the Courts, presented **H 34**. Last year the statute dealing with forcible penetration by use of a foreign object was changed by removing the word "sexual" from its context. This bill removes references to the term "sexual" from the sex offender registration statutes as they relate to the crime of forcible penetration by use of a foreign object.
- MOTION:** **Rep. Scott** made a motion to send **H 34** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Scott** will sponsor the bill on the floor.
- ADJOURN:** There being no further business to come before the committee, the meeting adjourned at 2:20 p.m.

Representative Dayley
Chair

Wendy Carver-Herbert
Secretary

AMENDED AGENDA #1
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Tuesday, January 29, 2019

SUBJECT	DESCRIPTION	PRESENTER
<u>H 43</u>	Public Defense Commission Terminology Change/ Technical Correction	Kathleen Elliott, Public Defense Commission
	Administrative Office of the Courts	Senior Judge Barry Wood, Administrative Office of the Courts
	Pre-trial Justice	Judge James Cawthon, 4th Judicial District
	Civil Protection Orders/Related Orders	Judge Jayme Sullivan, 3rd Judicial District
	Impact of Amended Penalty Provisions	Judge Victoria Olds, 2nd Judicial District
	Guardianship and Monitoring Program and Achievements	Judge David Kress, 6th Judicial District
<u>RS26569</u>	Firearms / Sexual Battery / Minors	Representative Wintrow

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Dayley	Rep Ehardt	Rep Troy
Vice Chairman Chaney	Rep Scott	Rep Young
Rep Kerby	Rep Goesling	Rep Gannon
Rep Amador	Rep Hartgen	Rep McCrostie
Rep Zito	Rep Marshall	Rep Wintrow
Rep Zollinger	Rep Ricks	Rep Davis

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Tuesday, January 29, 2019

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis

**ABSENT/
EXCUSED:** Representative McCrostie

GUESTS: Vicki Olds, Jim Cawthon, David Kress, Jayme Sullivan, Barry Wood, Idaho Courts; Brianne McCoy, Kathleen J. Elliott, PDC; Jared Larsen, Governor's Office; Holly Koole Rebholtz, IPAA

Chairman Dayley called the meeting to order at 1:32 p.m.

MOTION: **Rep. Marshall** made a motion to approve the minutes of the January 23, 2019 meeting. **Motion carried by voice vote.**

H 43: **Kathleen Elliott**, Executive Director, State Public Defense Commission presented **H 43**, which changes the terms "grant" to "financial assistance" and "application" to "compliance proposal." There is no fiscal impact and it does not alter the procedures for distributing funds. It only clarifies the terminology for ensuring funds for the provision of indigent defense services are available to the counties. In answer to a questions from the Committee, Ms. Elliott clarified that compliance with standards and procedures has always been required and this bill only creates a fair name for the funds.

MOTION: **Rep. Chaney** made a motion to send **H 43** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Gannon** will sponsor the bill on the floor.

Barry Wood, Senior District Judge, Deputy Administrator of the Courts, Idaho Supreme Court introduced the panel of judges. He clarified the difference between Magistrate and District judges. Magistrate Judges hear a wide variety of topics.

James Cawthon, Magistrate Judge, Fourth Judicial District presented information about pre-trial justice. Pre-trial justice is the period of time in a criminal case from the time of arrest, to charges being filed, to the point of disposition. It is a judge's responsibility to balance the need for community safety, while also ensuring the constitutional rights of the accused. Forty counties now provide representation at the initial arraignment, which improves the quality of justice. In answer to questions from the Committee, Judge Cawthon said there is room for statutory modification to improve pre-trial processes for defendants with little financial means, but it requires a balance between state and local jurisdictions. He also explained that the Idaho Criminal Justice Commission and Idaho Supreme Court have been looking at ways to apply fair financial restitution and cost reimbursement, but it is challenging.

Jayme Sullivan, Magistrate Judge, Third Judicial District presented on civil protection orders. She stated the courts take the protection of individuals and families very seriously. She explained the difference between the four statutes that address protection orders. They include action for protection, stalking, malicious harassment and telephone harassment. I.C. § 18-7907, the action for protection, no longer requires a person to have a domestic relationship in order to file a protection order. As a result, the numbers have increased from 4,500 filings in 2015, to just under 8,000 filings in 2018. Judge Sullivan said the expansion of the telephone harassment provision is resulting in a very wide range of complaints that may be going beyond the original intent of the law. Feuding neighbors or teenagers voicing spats through social media are two examples. In answer to questions from the Committee, Judge Sullivan explained the requirement for a hearing to meet the provision of the telephone harassment statute is a significant weight on the courts. She also explained that civil protection orders are not a criminal charge. It would be reflected in the Court's Odyssey system if a case is dismissed, but a person could petition to have the record sealed.

Victoria Olds, Magistrate Judge, Second Judicial District presented information on the impact of amended penalty provisions such as driving without privileges, invalid driver's license, tax intercept for delinquent debts owed to the courts and cash bail forfeitures. There has been an impact on collections. Judge Olds suggested these are examples of things the legislature could look at to encourage people to pay their infractions.

David Kress, Magistrate Judge, Sixth Judicial District presented an update on Idaho's guardianship and monitoring program. He explained the funding to support these programs is making a difference. For example, monitoring by the courts of guardianship showed a 23 percent improvement in 2016. The monitors are finding problems that the courts are able to address more effectively. The monitors are finding good things as well. The overall goal is to move people to a family decision making model. The biggest need is the lack of guardians across the state.

- RS 26569:** **Rep. Wintrow** introduced **RS 26569**, which adds sexual battery of a minor child sixteen or seventeen years of age to I.C. § 18-310. This statute lists all felony crimes that disqualify a convicted felon from owning a firearm. After extensive research and consultation with the Attorney General, Rep. Wintrow stated that leaving this segment of the population out of the statute was an inadvertent mistake.
- MOTION:** **Rep. Chaney** made a motion to introduce **RS 26569**. **Motion carried by voice vote.**
- ADJOURN:** There being no further business to come before the Committee, the meeting was adjourned at 3:06 p.m.

Representative Dayley
Chair

Wendy Carver-Herbert
Secretary

AMENDED AGENDA #1
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Thursday, January 31, 2019

SUBJECT	DESCRIPTION	PRESENTER
<u>RS26556</u>	Legal Immunity / Dogs, Cats in Vehicles	Rep. Elaine Smith
<u>RS26670</u>	DUI Diversion Program	Rep. Ryan Kerby

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Dayley	Rep Ehardt	Rep Troy
Vice Chairman Chaney	Rep Scott	Rep Young
Rep Kerby	Rep Goesling	Rep Gannon
Rep Amador	Rep Hartgen	Rep McCrostie
Rep Zito	Rep Marshall	Rep Wintrow
Rep Zollinger	Rep Ricks	Rep Davis

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Thursday, January 31, 2019

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis

**ABSENT/
EXCUSED:** Representatives Amador, Troy, Zollinger

GUESTS: Jared Larsen, Governor's Office

Chairman Dayley called the meeting to order at 1:30 p.m.

Chairman Dayley reviewed the purpose of RS print hearings.

MOTION: **Rep. Marshall** made a motion to approve the minutes of the January 21, 2019 meeting. **Motion carried by voice vote.**

RS 26556: **Rep. Smith** presented **RS 26556**, which adds new sections to Idaho Code Chapter 3, Title 5 and Chapter 70, Title 18. The purpose of the new sections provide legal immunity from civil liability and prosecution for first responders who provide certain aid to distressed dogs or cats in vehicles. The proposed bill defines who first responders are. Nineteen states and the District of Columbia have similar laws, but the definitions of who can render aid varies.

MOTION: **Rep. Chaney** made a motion to introduce **RS 26556**.

In response to questions and comments from the Committee, **Rep. Smith** said she would be open to including other types of animals and situations where aid could be provided but for now the proposed legislation only includes dogs and cats in vehicles. **Rep. Wintrow** stated she supported the motion to introduce the RS and if the bill is passed it could be expanded in the future after further research and consultation with stakeholders. She said she consulted with the Attorney General's office and was told there are not any laws on the books that would provide immunity to first responders if they rendered aid to dogs and cats in cars. **Rep. Scott** recommend not expanding the RS beyond its current scope because it could tread into territory of entry without warrant.

**VOTE ON
MOTION:** **Chairman Dayley** called for a vote on the motion. **Motion carried by voice vote.** **Reps. Marshall** and **Goesling** requested to be recorded as voting **NAY**.

RS 26670: **Rep. Kerby** presented **RS 26670**, which creates an optional diversion program that prosecuting attorneys may use in cases involving first time DUI offenders. He stated the goal is to make highways safer, get people out of the habit of driving under the influence, and reduce the amount of resources dedicated to this issue. He explained the first offense is a misdemeanor. The proposed bill allows a path to having that removed through several accountability measures that include installation of an ignition interlock device for 12 months; four days of labor detail or other approved community service; and 24 hours of education such as alcohol counseling. The case is dismissed if all requirements are completed successfully. **Rep. Kerby** clarified the RS provides a three strikes approach where the first offense is counted if it is followed by additional DUI offenses. The third offense will be charged as a felony as it is under the current law.

MOTION: **Rep. Gannon** made a motion to introduce **RS 26670. Motion carried by voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting adjourned at 1:51 p.m.

Representative Dayley
Chair

Wendy Carver-Herbert
Secretary

AGENDA
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Tuesday, February 05, 2019

SUBJECT	DESCRIPTION	PRESENTER
<u>RS26685</u>	Drug Trafficking / Mandatory Minimum Sentencing	Representative Rubel & Representative Zollinger
	Administrative Office of the Courts Introduction	Barry Wood, Senior Judge, Administrative Office of the Courts
	Need for Additional Judges in the Fourth Judicial District	Judge Melissa Moody, Fourth Judicial District
	Court Reporters	Judge Eric Wildman, Fifth Judicial District
	Problem-solving Courts	Judge Jeff Brudie, Second Judicial District
	Odyssey: Wave 3 Implementation & Future of Buildout	Judge Mitchell Brown, Sixth Judicial District
<u>RS26665</u>	Marriage age	Representative Wintrow

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Dayley	Rep Ehardt	Rep Troy
Vice Chairman Chaney	Rep Scott	Rep Young
Rep Kerby	Rep Goesling	Rep Gannon
Rep Amador	Rep Hartgen	Rep McCrostie
Rep Zito	Rep Marshall	Rep Wintrow
Rep Zollinger	Rep Ricks	Rep Davis

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Tuesday, February 05, 2019

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis

**ABSENT/
EXCUSED:** None

GUESTS: Doug Taylor, ISC District 3; Paul Riggins, Idaho Association Criminal Defense Lawyers; Tony Geddes, Ada P17; Jesse Taylor, ABC; Nicole Fitzgerald, Idaho Council on DV; Kellie Lavrgne, Shoshone County Crisis & Resource Center; Chauntelle Lieske, Safe Passage; Rebecca James, Boundary Co. Victim Services; Debra Jacobs; Jennifer Zielinski; Emerald Douthit; Jaime Hansen, Family Advocates

Chairman Dayley called the meeting to order at 1:30 p.m.

MOTION: **Rep. Marshall** made a motion to approve the minutes of January 15, 2019, January 29, 2019 and January 31, 2019. **Motion carried by voice vote.**

Chairman Dayley explained the role of legislators is to be cognizant of policy impacts on germane agency budgets so he will provide a review before the Joint Finance-Appropriation Committee on February 13, 2019. He requested that Committee members let him know if there are any budgetary matters to be addressed before JFAC. In answer to questions from the Committee, Chairman Dayley clarified the RS introduction hearings are to answer questions regarding the SOP, Fiscal Notes or technical corrections that may need to be made in the RS, but substantive matters are discussed when it comes before the Committee as a bill.

RS 26685: **Rep. Rubel** and **Rep. Zollinger** presented **RS 26685**. A similar bill was introduced and passed by the House last year. It revises mandatory sentences for certain drug trafficking substances, removes the word "mandatory" from this section of code, and gives judges the latitude to impose sentences, including mandatory sentences under certain circumstances. In answer to questions from the Committee, Rep. Rubel clarified there are still cases where minimum sentences must be used. Removing the word "mandatory" creates an escape hatch for judges to use discretion.

Rep. Marshall stated he is concerned about the direction of where criminal code is going, particularly around the use of certain language of attainder. Regarding this RS, he stated the use of the words "is guilty" is concerning since it is not the Legislature's role to pronounce guilt. **Rep. Rubel** responded that this may be a far broader issue with the entire criminal code, so it may not make sense to address it in just this proposed legislation. She said this RS has been vetted extensively and would like to move forward with the RS as is. **Rep. Zollinger** concurred and suggested a sub-committee or working group could be formed to address a clean up of the entire criminal code to address Rep. Marshall's concerns.

MOTION: **Rep. McCrostie** made a motion to introduce **RS 26685**. **Motion carried by voice vote.**

Barry Wood, Senior Judge, Administrative Office of the Courts introduced the panel of District Judges and Administrative District Judges.

Melissa Moody, Administrative District Judge, Fourth Judicial District presented a case for funding two Magistrate Judges and one District Judge in Ada County. She stated defendants have the right to be listened to, respected and have the court process explained, but this isn't possible with heavy caseloads. For example, there are 900 cases and trials backed up in the Family Law division and it can take 10 months for contested cases to be heard. The last judge requested for Ada County was in 2012.

Eric Wildman, Administrative District Judge, Fifth Judicial District, spoke about the importance of official court reporters and the difficulty in filling these positions. Verbatim transcripts of court proceedings are required and failure to keep an accurate record is a risk to due process. He stated positions are difficult to fill. They are filling the gaps with recorders from other districts or freelance contractors at a reduced rate, but there is a lack of funding to pay for travel per diem. Thirteen court reporters will retire in the next five years, and an additional 15 will retire in the following five years. He explained the difficulty with using only audio recordings. The failure of a recording can result in retrial. Higher compensation and travel per diems are needed to attract the highly skilled court reporters. The courts are also creating a work force development program.

Jeff Brudie, District Judge, Second Judicial District, provided an overview of the problem-solving courts which can be effective in identifying people who can be treated and rehabilitated to avoid prison sentences. It's a team approach that involves a district manager, court coordinators, treatment providers, prosecuting and defense attorneys and probation officers. The problem-solving courts are volunteer positions. They get started based on a judge's interest. Problem-solving courts often operate before or after normal business hours, and is in addition to regular caseloads. He stated the recidivism rates for those going through the drug problem-solving courts is lower when compared to the rider program or probation.

Mitchell Brown, Administrative District Judge, Sixth Judicial District, provided an overview and update on the iCourt project, better known as Odyssey. He stated it is quick and easy to access to iCourt records across counties, for any case at any time. Attorneys can also file electronically to meet timelines. The final process of the buildout is to implement an upgrade in late 2019 and early 2020 to enhance performance and improve usability. There are plans to implement modules that will make jury selection more manageable; streamline the access to data; improve case load management; and upgrade the public portal. In answer to questions from the Committee, Judge Brown stated Odyssey needed to be implemented because the previous system was obsolete. The vendor contract ensures all upgrades to the system will be available free of charge. The vendor works with 13 other states covering 40% of the courts in the U.S. and is very reputable.

In answer to questions from the Committee, **Judge Brudie** stated there are six Veteran problem-solving courts in the state and expansion would need more funding and judges who are interested in taking them on. **Judge Wood** further explained he did not immediately know the amount of funding that would be needed to expand the number of Veteran courts because it involves a broad range of stakeholders including support from the counties. Judge Brudie explained there is a backlog in the mental health courts. Defendants qualify for mental health problem-solving courts based on five specific diagnoses. If they don't qualify for mental health court, they end up in other courts and often end up in prison.

RS 26665: **Rep. Wintrow** presented **RS 26665**, which deals with raising the marriage age to prevent forced or coerced marriage. The RS came about as a result of her work on the human trafficking subcommittee under the Criminal Justice Commission. This proposed legislation aligns with Idaho's statutory rape laws and closes a loophole. It permits minors to marry only if they consent to do so, have permission from parents or legal guardian, and a review by the court.

MOTION: **Rep. Davis** made a motion to introduce **RS 26665**. **Motion carried by voice vote.**

HR 1: **Chairman Dayley** stated **HR 1** was held in Committee for a time certain of February 5, 2019 to allow time for comment and input from members who voiced concerns during the public hearing on January 21, 2019. He will bring back a new RS before the committee on Thursday, February 7, 2019.

MOTION: **Rep. Chaney** made a motion to postpone consideration of **HR 1** for a time certain of February 7, 2019. **Motion carried by voice vote .**

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 3:05 p.m.

Representative Dayley
Chair

Wendy Carver-Herbert
Secretary

AGENDA
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Thursday, February 07, 2019

SUBJECT	DESCRIPTION	PRESENTER
<u>RS26623</u>	Wage Claims / Time Period	Representative Erpelding
<u>RS26490C2</u>	Children / Genital Mutilation	Representative Troy & Representative Giddings
<u>RS26508</u>	Peace Officers / Arrest Without Warrant / Schools	Representative Goesling
<u>RS26649C1</u>	Sexual Assault Evidence Kits	Representative Wintrow
<u>RS26709</u>	Crimes, Murder, Rape / Fees	Representative Troy
<u>RS26766</u>	Pretrial Risk Assessment Algorithms	Representative Chaney
<u>RS26773</u>	Rule 76 / Ethics Rule	Representative Dayley
<u>HR 1</u>	Rule 76 / Ethics Rule	Representative Dayley

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Dayley	Rep Ehardt	Rep Troy
Vice Chairman Chaney	Rep Scott	Rep Young
Rep Kerby	Rep Goesling	Rep Gannon
Rep Amador	Rep Hartgen	Rep McCrostie
Rep Zito	Rep Marshall	Rep Wintrow
Rep Zollinger	Rep Ricks	Rep Davis

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Thursday, February 07, 2019

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis

**ABSENT/
EXCUSED:** None

GUESTS: Jason Hudson, AFL-CIO; Jesse Taylor, ABC; Quinn Perry, Idaho School Boards Association; Matt Compton, IEA; Gloria Totoricaguena, Idaho Policy Counseling; Jared Larsen, Governor's Office; Adam Matthews; Cody Ricks, Ricks' Disability; Rep. Pricilla Giddings

Vice Chairman Chaney called the meeting to order at 1:31 p.m.

RS 26623: **Rep. Erpelding** presented **RS 26623**, proposed legislation extending the time in which a claim for unpaid wages could be made to the Department of Labor (DOL) or in District Court from six months to 12 months. According to the DOL, there are two times when people typically notice a wage shortage: the Monday after pay day and after filing taxes. The six month statute of limitations does not allow enough time for the problem to be identified.

MOTION: **Rep. Wintrow** made a motion to introduce **RS 26623**. **Motion carried by voice vote.**

RS 26490C2: **Reps. Troy** and **Giddings** presented **RS 26490C2**. The proposed legislation explains the state's responsibility to outlaw female genital mutilation (FGM). Twenty-eight states have anti-FGM laws, but Idaho is not one of them. There are about 560 girls at risk in the state of Idaho.

Rep. Marshall raised the issue of language use in defining law, stating the law should define the crime and punishment, but not presume guilt. The words, "shall be guilty" in line 16 of the RS are concerning. He is open to pursuing a bigger initiative to address this issue throughout Idaho Code and will vote to introduce the RS.

MOTION: **Rep. Ehardt** made a motion to introduce **RS 26490C2**. **Motion carried by voice vote.**

RS 26508: **Rep. Goesling** presented **RS 26508**. The proposed legislation allows law enforcement to take a suspect into custody to evaluate their ability to carry out their threat of violence to a school, even if the suspect is not on school property. In answer to questions from the Committee, Rep. Goesling explained that the law passed last year allowed law enforcement to respond whether the threat is made on or off school property, but they can only hold the suspect if the officer witnesses the threat. Under current law, the suspect can be cited for a misdemeanor for making a threat, but law enforcement is unable to hold the suspect until further evaluation of risk can be assessed.

MOTION: **Rep. Gannon** made a motion to introduce **RS 26508**.

In answer to questions from the committee, **Rep. Goesling** stated the Idaho Association of School Administrators brought the request for the proposed bill forward, and it is supported by the Idaho Sheriff's Association, Fraternal Order of Police, Idaho Office of School Safety and Security, Idaho School Board Association, Idaho Prosecutors Association, Idaho Education Association, Moscow Chief of Police and Sheriff of Latah County. He was unable to answer the question about where in code domestic violence is defined, or why the change in wording in line 23 occurred, which changed the wording from "domestic assault or battery" to "domestic violence," and will provide the answer at the bill hearing.

SUBSTITUTE MOTION:

Rep. Zollinger made a substitute motion to return **RS 26508** to the sponsor until there is an answer to the question about why the words were changed in line 23 from "domestic assault or battery" to "domestic violence."

Speaking to the original motion, **Rep. McCrostie** said he supports the original motion because the reference on line 23 aligns with the title of Idaho Code § 18-918. This title change is not the substantive part of the bill, the substantive section of **RS 26508** is on lines 25 to 27.

ROLL CALL VOTE ON SUBSTITUTE MOTION:

Vice Chairman Chaney called for a roll call vote on the substitute motion to return **RS 26508** to the sponsor. **Motion failed by a vote of 4 AYE and 14 NAY.** **Voting in favor** of the substitute motion: **Reps. Zito, Zollinger, Ehardt and Scott.** **Voting in opposition** to the motion: **Reps. Chaney, Kerby, Amador, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis and Dayley.**

VOTE ON ORIGINAL MOTION:

Vice Chairman Chaney called for a vote on the original motion to introduce **RS 26508.** **Motion carried by voice vote.** **Reps. Zito and Zollinger** requested to be recorded as voting **Nay.**

Vice Chairman Chaney turned the gavel over to **Chairman Dayley.**

RS 26649C1:

Rep. Wintrow presented **RS 26649C1.** The proposed legislation regarding the processing of sexual assault evidence kits. Current law says all kits are processed unless the victim says they don't want it processed, or there's no evidence to charge. The proposed legislation requires all sexual assault evidence kits to be tested unless there is no evidence that a crime occurred, even if the victim chooses not to prosecute. Processing all kits allows scientific data to go into a tracking mechanism that is available to law enforcement for tracking possible connections to other crimes. The victim always retains the right to choose whether to prosecute. In answer to a question from the Committee, Rep. Wintrow stated all information is removed from the database if it is determined that no crime was committed.

MOTION:

Rep. McCrostie made a motion to introduce **RS 26649C1.** **Motion carried by voice vote.**

RS 26709:

Rep. Troy presented **RS 26709.** In 1992 Idaho code enacted a fine of up to \$5,000 for certain crimes of violence, separate from other criminal penalties. This legislation requests the list of crimes be expanded to include attempted murder and attempted rape. Often these fines are used for counseling for victims.

MOTION:

Rep. Hartgen made a motion to introduce **RS 26709.** **Motion carried by voice vote.**

RS 26766: **Rep. Chaney** presented **RS 26766**, describing how predictive algorithmic risk assessment tools for pretrial release and sentencing decisions can be used. He explained these tools use an algorithm to determine a person's likelihood of recidivism in the future and can be held in jail or face penalties based on the predictive information provided by these tools. Only the vendors know what data is used or how the algorithms are created. In some states criminal defendants have been unable to get information about what data is used to determine their sentences because the companies that own these tools have argued that information is a trade secret. According to the data, minorities are being electronically discriminated against. The accuracy of these systems is 56% to 65%, but the rate of error is biased against minorities. The proposed legislation addresses the pretrial use of these tools only and requires non-biased, fully transparent systems to be used.

In answer to questions from the Committee, **Rep. Chaney** stated the technology is being used in Ada County, but not at the State level, so no Idaho specific demographic data is available. The proposed legislation lists requirements to meet the approved standards for bodies using these tools. With regard to free from bias for protected versus all classes, Rep. Chaney stated the very nature of the tools use some biases, whether the defendant lives in the community or has previous convictions could be taken into consideration.

MOTION: **Rep. Gannon** made a motion to introduce **RS 26766**. **Motion carried by voice vote.**

Chairman Dayley turned the gavel over to **Vice Chairman Chaney**.

RS 26773: **Chairman Dayley** presented **RS 26773**, stating the legislation was drafted after a review of the minutes, follow-up with the individuals who voiced concerns, visits with former ethics committee members, and consultation with the Attorney General's office and Chief Clerk of the House. He also addressed questions from the Committee regarding the Respectful Workplace Policy.

MOTION: **Rep. Amador** made a motion to introduce **RS 26773**.

Speaking to the motion, **Rep. Amador** stated that he, **Reps. Troy**, and **Dayley** worked on the Respectful Workplace Policy and encouraged members to talk with them about its purpose.

In answer to questions from the Committee, **Chairman Dayley** clarified the Respectful Workplace Policy Committee was put in place by the Legislative Council. Members of the Council are nominated and elected by the Senate and House membership. He explained the difference between a democracy and representative government and stated the Legislative Council operates under the same representative government principles as the rest of government. The Ethics Committee is designed to investigate matters brought forward in a way that preserves the privacy of all parties, but if the matter requires action, a recommendation would be made to the full House and would require a two-thirds vote.

Concerns about the Respectful Workplace Policy by some Committee members included: there is no process for the body of the House to provide input into the creation of the policy; it creates another level of bureaucracy; the policy language is very general and doesn't clearly state what constitutes a violation; the role of a Committee is not to make policy; and issues can be leaked to the press.

Speaking to the motion, **Rep. Young** stated she would not vote in favor of introducing the proposed legislation because it doesn't provide a clear definition for what constitutes an ethics violation, and it could be used as a political weapon.

ROLL CALL VOTE: Vice Chairman Chaney requested a roll call vote on the motion to introduce **RS 26773**. Motion carried by a vote of **9 AYE, 3 Nay 6 Absent/Excused**. Voting in favor of the motion: **Reps. Chaney, Amador, Zollinger, Hartgen, Ricks, Troy, Gannon, Wintrow and Dayley**. Voting in opposition to the motion: **Reps. Zito, Scott, and Young**. **Reps. Kerby, Ehardt, Goesling, Marshall, McCrostie and Davis** were **Absent/Excused**.

HR 1: **HR 1** Repeals and replaces Rule 76, the House Ethics Committee, which was held for time certain, February 7, 2019.

MOTION: **Rep. Amador** made a motion to **HOLD HR 1** in Committee. Motion carried by voice vote.

Vice Chairman Chaney handed the gavel over to **Chairman Dayley**.

Chairman Dayley reminded the Committee to make sure Fiscal Notes are accurate and detailed.

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 3:09 p.m.

Representative Chaney
Chair

Wendy Carver-Herbert
Secretary

AMENDED AGENDA #1
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Monday, February 11, 2019

SUBJECT	DESCRIPTION	PRESENTER
<u>RS26706</u>	Dangerous Dogs	Representative Moyle
<u>RS26728</u>	Forcible Entry / Unlawful Detainer	Paul Smith, Idaho Apartment Association
<u>RS26749</u>	Foreign Defamation Judgements	Representative Ehardt
<u>RS26850</u>	Penalties for Marijuana Possession	Representative Gannon
<u>HR 2</u>	Rule 76 / Ethics Committee	Representative Dayley

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Dayley	Rep Ehardt	Rep Troy
Vice Chairman Chaney	Rep Scott	Rep Young
Rep Kerby	Rep Goesling	Rep Gannon
Rep Amador	Rep Hartgen	Rep McCrostie
Rep Zito	Rep Marshall	Rep Wintrow
Rep Zollinger	Rep Ricks	Rep Davis

COMMITTEE SECRETARY

Wendy Carver-Herbert
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MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Monday, February 11, 2019

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis

**ABSENT/
EXCUSED:** None

GUESTS: Jack Lyman, Idaho Housing Alliance; Len Galus, Paul Smith, Idaho Apartment Association; Alex Costa, Greystar; Andrew Masser, Paul Riggins, IACDL; Ruby Mendez, ACLU; Rep. Giddings

Chairman Dayley called the meeting to order at 1:30 p.m.

RS 26706: **Jeremy Pisca**, on behalf of the Idaho Humane Society, presented **RS 26706**. This proposed legislation proposes to remedy the penalty portion of the dangerous dog law that was overhauled in 2016. Misdemeanor penalties were inadvertently dropped from the code. Cases are not being prosecuted as a result.

MOTION: **Rep. Hartgen** made a motion to introduce **RS 26706**. **Motion carried by voice vote.**

RS 26728: **Paul Smith**, Executive Director of the Idaho Apartment Association presented **RS 26728**. The proposed legislation increases tenant protection for personal property left behind; gives tenants alternatives to litigation in certain circumstances; and enables tenants to serve landlords a notice, and if the violation isn't cured within three days, tenants can deduct the cost of remedying the problem from their rent, or get out of their lease. Some domestic violence protections are added, which allow tenants to get out of their lease or get their locks changed. The proposed legislation also reduces tenant costs for being evicted. Mr. Smith stated the proposed legislation also provides clearer rules for landlords regarding abandoned property, three day notices and deposit refunds. It also requires landlords to hold security deposit money in trust. Additionally, the eviction process is expedited into one lawsuit instead of two, which will reduce costs and length of time for evictions.

In answer to questions from the Committee, **Mr. Smith** explained that under current law, an order of restitution is needed first in an eviction, and a second lawsuit is needed to seek monetary damages. This proposed legislation will combine these two legal processes into one. Under the proposed legislation, landlords can store and dispose of abandoned property rather than law enforcement.

MOTION: **Rep. Scott** made a motion to introduce **RS 26728**. **Motion carried by voice vote.**

RS 26749: **Rep. Ehardt** presented **RS 26749**. The proposed legislation was written to protect first amendment rights of authors and journalists by preventing them from being pulled into foreign courts for libel. Journalists have been pulled into courts because litigants are shopping states without laws in place to prevent such actions. The proposed legislation is commonly referred to as Rachel's Law and has passed in 11 states with bipartisan support.

MOTION: **Rep. Zollinger** made a motion to introduce **RS 26749**. **Motion carried by voice vote.**

- RS 26850:** **Rep. Gannon** presented **RS 26850**. The proposed legislation allows persons convicted of possessing less than a half (1/2) ounce of marijuana to reduce their misdemeanor charge to an infraction if they voluntarily complete four hours of court approved drug/alcohol education, and pay a fine of \$250, or complete eight hours of court approved community service.
- In answer to questions from the Committee, **Rep. Troy** clarified industrial hemp is removed from the schedule of illegal substances. **Rep. Zollinger** explained several places in code need cleaned up if the industrial hemp bill passes, also applying to **RS 26850** if it were to become law.
- MOTION:** **Rep. Wintrow** made a motion to introduce **RS 26850**. **Motion carried by voice vote.**
- HR 2:** **Chairman Dayley** explained **HR 2** has outstanding questions concerning Rule 76 which deserve additional vetting. He requested a motion to hold the bill in Committee.
- MOTION:** **Rep. Chaney** made a motion to **HOLD HR 2** in Committee. **Motion carried by voice vote.**
- ADJOURN:** There being no further business to come before the Committee, the meeting was adjourned at 2:04 p.m.

Representative Dayley
Chair

Wendy Carver-Herbert
Secretary

AMENDED AGENDA #1
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Wednesday, February 13, 2019

SUBJECT	DESCRIPTION	PRESENTER
	State Appellate Public Defender's Office Update	Eric Fredericksen, State Appellate Public Defender's Office
	Annual Report of Sexual Assault Evidence Kit Tracking	Matthew Gamette, Idaho State Police Forensic Services
<u>H 116</u>	Sexual Assault Evidence Kits	Representative Wintrow
<u>H 117</u>	Crime Victims / Fees	Representative Troy
<u>H 114</u>	Children / Genital Mutilation	Representative Giddings, Representative Troy

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Dayley	Rep Ehardt	Rep Troy
Vice Chairman Chaney	Rep Scott	Rep Young
Rep Kerby	Rep Goesling	Rep Gannon
Rep Amador	Rep Hartgen	Rep McCrostie
Rep Zito	Rep Marshall	Rep Wintrow
Rep Zollinger	Rep Ricks	Rep Davis

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Wednesday, February 13, 2019

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis

**ABSENT/
EXCUSED:** Representative McCrostie

GUESTS: Charlie Spencer, Christina Straub, Anne Wardle, Idaho State Police; Lori Burrelle, Diane Jensen, SW ID Chapter of National Org. for Women; Mark Estess, Idaho Chiefs of Police; Annie Hightower, IDASDV; Nicole Fitzgerald, Council on Domestic Violence; Pro-Life; Joshua Wickard, PD; Jean Fisher, ISAKI; Toni Lawson, Idaho Hospital Association; Jared Larsen, Governor's Office; Beatrice Black

Chairman Dayley called the meeting to order at 1:31 p.m.

Eric Fredericksen, State Appellate Public Defender (SAPD) presented an update. The SAPD provides appellate representation to indigent defendants who have been convicted of a felony in district court. The SAPD also provides appellate representation to petitioners in state felony post-conviction and habeas cases. In capital cases, where a defendant has been sentenced to death, the SAPD provides district court representation for post-conviction proceedings, as well as representation on appeal. This provides relief to the counties through the Capital Crimes Defense Fund. Mr. Fredericksen explained attorneys are evaluated on workloads to determine how busy they are and they are busier than usual, but SAPD contracts out if needed. Today, there are 30 active first degree murder cases in Idaho, which is similar to last year. Of those 30 cases there are six death notices. In answer to a question from the Committee, he stated the average length of time a capital death case is in his office is 14 years.

Matthew Gamette, Laboratory Assistant Director, Idaho State Police (ISP) Forensic Services presented an update on the processing and tracking of sexual assault evidence kits. ISP Forensic Services operates three labs, but only the Meridian, Idaho lab processes DNA. Idaho is the first state in the country to put a fully functional tracking system on line to track sexual assault evidence kits and is shared free of charge with any state that wants to implement the tracking system. Six hundred and forty kits are appropriated. However, 689 kits have been submitted. The numbers differ because law enforcement may have previously taken the kits, but held them for further investigation, or at the request of the victim. In answer to a question from the Committee, Mr. Gamette stated tracking is important because there should be accountability for every kit that is collected. Tracking and accountability was established with previous legislation and many states are interested.

H 116: **Rep. Wintrow**, presented **H 116**. This legislation relates to the processing of sexual assault evidence kits and asks hospitals to enter the data when it is collected. There has been confusion in the past about whether to process the kits, or not if the victim chooses to not pursue prosecution. This bill clarifies this, and evidence kits will be processed in all cases unless the accusation is unfounded. If the charge is unfounded, the data will be removed from the database.

Annie Hightower, Director for Idaho Coalition Against Sexual and Domestic Violence; **Beatrice Black**, Women's and Children's Alliance; **Jean Fisher**, Ada County Prosecutor's Office and **Lori Burelle** on behalf of the Southwest Chapter of the National Organization for Women spoke **in support of H 116**. They explained the process for writing this bill has been very collaborative and victims' rights have always been at the center. Ms. Hightower stated this bill will help establish trust between victims and law enforcement; confirm a suspect's identity in some cases; help enhance public safety; and confirm case specific information in some cases. Sexual assault is a very complicated topic and this is a positive step forward to support victims and helps them gain some sense of healing. Ms. Fisher stated this bill would remove the subjective nature of deciding what to do with the evidence kits once they are collected.

MOTION: **Rep. Kerby** made a motion to send **H 116** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Wintrow** will sponsor the bill on the floor.

H 117: **Rep. Troy**, presented **H 117**. The law currently allows a fine of up to \$5,000 for certain crimes of violence and is separate from criminal penalties and restitution. If the fines are recovered, families often use the funds for victim counseling and other treatments. This bill adds the crimes of attempted strangulation and attempted rape, which are currently eligible for up to \$2,500 and this bill increases the amount to \$5,000. These crimes are traumatic and have lasting impacts on victims. In answer to questions from the Committee, Rep. Troy stated the bill is different from the Crime Victims Compensation Act and victims can collect from both. She said this bill does not address increasing the maximum fine above \$5,000, but it could be looked at in the future.

MOTION: **Rep. Gannon** made a motion to send **H 117** to the floor with a **DO PASS** recommendation.

In answer to questions from the Committee, **Rep. Troy** explained the crimes listed in the bill are when a person is convicted of attempted acts. Rep. Troy yielded to **Rep. Chaney** who explained I.C. §18-306 is the statute dealing with certain attempted crimes and it provides a definition and conviction of attempted felonies.

Speaking to the motion, **Reps. Zollinger, Ehardt, Young** and **Marshall** stated they were concerned attempted rape and attempted murder are not clearly defined and the bill should state that the fines apply "upon conviction" of attempted murder and rape. **Rep. Chaney** explained the definition of attempts is based on the qualifying language of paragraph one of Section 1 of I.C. §19-5307 where it is defined with the language that states, "defendant found guilty of any felony listed in subsections 2 and 3 of this section." Therefore, this addresses the concerns being raised. He said the bill is just raising the ceiling of the fine from \$2,500 to \$5,000. **Reps. Gannon, Kerby** and **Chairman Dayley** concurred with Rep. Chaney.

MOTION: **Rep. Goesling** made a motion to call for previous question.

ROLL CALL VOTE: **Chairman Dayley** called for a roll call vote on call for previous question. **Motion failed by vote of 13 AYE, 4 Nay, 1 Absent/Excused.** **Voting in favor** of the motion: **Reps. Goesling, Ricks, Troy, Wintrow.** **Voting in opposition** to the motion: **Reps. Chaney, Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Hartgen, Marshall, Young, Gannon, Davis, Dayley.** **Rep. McCrostie** was **Absent/Excused.**

Rep. Troy requested a motion to hold the bill in committee until she could have more time to address the questions from the Committee.

MOTION WITHDRAWN: **Rep. Gannon** made a motion to withdraw his motion to send **H 117** to the floor with a **DO PASS** recommendation.

MOTION: **Rep. Gannon** made a motion to **HOLD H 117** in Committee for time certain Feb. 19, 2019.

SUBSTITUTE MOTION: **Rep. Wintrow** made a substitute motion to send **H 117** to the floor with a **DO PASS** recommendation.

Speaking to the motion, **Rep. Wintrow** stated that amending legislation on the fly is a very serious issue and was concerned the bill could get delayed.

In answer to questions from the Committee, **Rep. Troy** stated a retired judge from the Idaho court of appeals reviewed the legislation and she is confident in her opinion. **Reps. Marshall** and **Young** stated the explanation provided by **Rep. Chaney** addressed their concerns and would vote in favor of the substitute motion.

VOTE ON SUBSTITUTE MOTION: **Chairman Dayley** called for a vote on the substitute motion. **Motion carried by voice vote.** **Rep. Zollinger** requested he be recorded as voting **NAY**. **Rep. Troy** will sponsor the bill on the floor.

H 114: **Rep. Giddings** presented **H 114**, which makes female genital mutilation (FGM) of a minor a felony. The Federal court case last fall put the responsibility of outlawing this practice back on the states. She stated she worked with several Deputies in the Attorney General's office to get their opinions. This legislation increases the statute of limitations to three years from the date the offense is reported by the victim to law enforcement for ritualized abuse of children and FGM. Under current law the statute of limitation is five years from the date of the act. This is impractical because many children are very young when the offense is committed. **Rep. Giddings** also stated she looked into the questions from the Committee regarding the language that states "shall be guilty of a felony." This language is used in several Idaho criminal codes and suggested it could be addressed as a broader clean up. She explained several states have stronger FGM laws that prevent people from taking girls out of state or the country. FGM is different from male circumcision because there are no benefits and it can have long term physical and mental health complications. FGM is considered an international health crisis by the World Health Organization.

In answer to a question from the Committee, **Rep. Giddings** said they would get clarification from the Attorney General on whether this legislation would prohibit surgeries in U.S. hospitals, by licensed doctors to alter the genitalia of healthy intersex babies at the request of parents.

Pro Life spoke in support of the bill.

Rep. Marshall said he remains concerned about the language that pronounces guilt. **Chairman Dayley** said he and **Rep. Marshall** have spoken about this and he supports a comprehensive review to address this concern.

MOTION: **Rep. Kerby** made a motion to send **H 114** to the floor with a **DO PASS** recommendation. **Motion carried by voice.** **Reps. Giddings** and **Troy** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:26 p.m.

Representative Dayley
Chair

Wendy Carver-Herbert
Secretary

AGENDA
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE
Upon Adjournment
Room EW42
Friday, February 15, 2019

SUBJECT	DESCRIPTION	PRESENTER
H 137	Dangerous Dogs	Jeremy Pisca, Idaho Humane Society
H 79	Legal Immunity / Dogs, Cats / Vehicles	Representative Smith

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Dayley	Rep Ehardt	Rep Troy
Vice Chairman Chaney	Rep Scott	Rep Young
Rep Kerby	Rep Goesling	Rep Gannon
Rep Amador	Rep Hartgen	Rep McCrostie
Rep Zito	Rep Marshall	Rep Wintrow
Rep Zollinger	Rep Ricks	Rep Davis

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Friday, February 15, 2019

TIME: Upon Adjournment

PLACE: Room EW42

MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis

**ABSENT/
EXCUSED:** Representative Troy

GUESTS: Jeremy Pisca, Jeff Rosenthal, Idaho Humane Society; Rob Shoplock, PFFI
Chairman Dayley called the meeting to order at 12:41 p.m.

MOTION: **Rep Marshall** made a motion to approve the minutes of the February 5, 2019 meeting. **Motion carried by voice vote.**

H 137: **Jeremy Pisca**, representing the Idaho Humane Society, presented **H 137** by stating the legislation corrects some enforcement errors that were inadvertently left out of the dangerous dog law that was passed in 2016. Mr. Pisca yielded his time to **Dr. Jeff Rosenthal**, Chief Executive Officer of the Idaho Humane Society. The Idaho Humane Society provides animal control services for Ada County and is called out when a dog attacks. Current law allows great discretion on how to deal with an offending dog, but the law ceased to be a criminal offense for owning such a dog, and is not being prosecuted. Dr. Rosenthal stated this bill restores the misdemeanor charge. He outlined the changes in the law, stating the definition for serious injury on page two of the bill was modified. However, he requested the bill be sent to the amending order to correct an error in the new definition because the term "significant injury" should be "serious injury." The definition was modified at the request of prosecutors because it requires a medical professional to testify and often requires access to medical records. He said the section allowing certain persons to file a petition to declare a dog dangerous or at-risk was removed because anyone can sign a misdemeanor complaint.

MOTION: **Rep. Wintrow** made a motion to send **H 137** to General Orders.
In answer to questions from the Committee, **Dr. Rosenthal** explained the courts have discretion to practice general reasonableness in judgement if a provoked dog attacks, or is protecting property. This didn't exist in previous law. Some Committee members stated concerns that the language of the bill doesn't preclude dog owners or keepers who have no prior knowledge of a dog's propensity to inflict injury from prosecution under a criminal misdemeanor charge.

**VOTE ON
MOTION:** **Chairman Dayley** called for vote on the motion to send **H 137** to General Orders. **Motion carried by voice vote.** **Representative Moyle** will sponsor the bill on the floor.

H 79: **Rep. Smith** presented **H 79**, which provides immunity to first responders who rescue distressed dogs or cats from vehicles. The definition for a first responder is clearly defined in the bill. She explained how quickly a car can reach dangerous temperatures and stated the number of emergency calls received last year by law enforcement in the cities represented by Committee members. The proposed legislation was taken to the Idaho Sheriff's Association and it was unanimously supported.

Rob Shoplock, Executive Vice President of the Professional Fire Fighters of Idaho spoke **in support** of **H 79**. He explained first responders often respond to calls for distressed dogs and use their lock out kit and they do it because it's the humane thing to do.

In answer to questions from the Committee, **Mr. Shoplock** stated using lock out kits typically do not cause damage to cars and only recalled one time where additional steps were needed to restore a vehicle to it's original condition. He explained animals are rescued from locations other than cars, most notably when a owner dies and an animal needs to be secured, but it's usually done at a family's request. He said animal rescue is discussed greatly among his group. Response time can range from two minutes to twenty minutes and after making a determination of the animal's condition they will proceed with rescue. They respond just as they would to rescue a dog caught on the ice.

MOTION: **Rep. Wintrow** made a motion to send **H 79** to the floor with a **DO PASS** recommendation.

Speaking **in opposition** to the legislation, **Reps. Marshall, Ricks** and **Ehardt** stated concerns about increased costs to local and county jurisdictions due to increased rescue call outs, liability and expense for damaged vehicles, no recourse for car owners, and the good samaritan law offers some coverage.

Reps. Amador and **Wintrow** spoke **in support** of **H 79**. They said they didn't believe the bill would cause a mass uprising in calls to law enforcement, and it would discourage citizens from taking measures into their own hands.

In answer to questions from the Committee, **Rep. Smith** said the bill declared an emergency so it would go into effect immediately upon passage and approval. This would cover the early months of summer, rather than go into effect in July.

ROLL CALL VOTE: **Chairman Dayley** requested a roll call vote on **H 79**. **Motion carried by a vote of 9 AYE, 5 NAY, 4 Absent/Excused.** **Voting in favor** of the motion: **Reps. Chaney, Kerby, Amador, Goesling, Hartgen, McCrostie, Wintrow, Davis** and **Chairman Dayley**. **Voting in opposition** to the motion: **Reps. Zito, Ehardt, Scott, Marshall** and **Ricks**. **Reps. Zollinger, Troy, Young** and **Gannon** were **Absent/Excused**. **Rep. Smith** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 1:34 p.m.

Representative Dayley
Chair

Wendy Carver-Herbert
Secretary

AGENDA
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Tuesday, February 19, 2019

SUBJECT	DESCRIPTION	PRESENTER
H 115	Peace Officers / Arrest Without Warrant / School Violence	Representative Goesling
H 78	DUI Criminal Diversion Program	Representative Kerby
H 118	Pretrial Risk Algorithms	Representative Chaney

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Dayley	Rep Ehardt	Rep Troy
Vice Chairman Chaney	Rep Scott	Rep Young
Rep Kerby	Rep Goesling	Rep Gannon
Rep Amador	Rep Hartgen	Rep McCrostie
Rep Zito	Rep Marshall	Rep Wintrow
Rep Zollinger	Rep Ricks	Rep Davis

COMMITTEE SECRETARY

Wendy Carver-Herbert
Room: EW56
Phone: 332-1127
email: hjud@house.idaho.gov

MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Tuesday, February 19, 2019

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis

**ABSENT/
EXCUSED:** Representative Ricks

GUESTS: Michael Ekstrand; Kathy Griesmyer, ACLU Idaho; Gloria Totoricaguena, Idaho Policy; David Gomez, Meridian Police; Stu Hobson, Nampa Police; Paul Stark, Matt Compton, IEA; Tom Arkoosh, Mark Manweiler, Justine Parker, Elisa Massoth, IACDL; Kathy Goldman; Jared Larsen, Governor's Office; Jeff Clayton, Jesse Taylor, ABC; Mike Munger, IOSSS; Miron Aburusa, MADD; Kenden Poole, CIIM; Greg Bailey, Moscow School District 28; Holly Koole Rebholtz, IPAA; Sara Thomas, Barry Wood, ISC; Quinn Perry, ISBA; Kody Aldrich, ACSO; Travis Engle, Daren Ward, Canyon County Sheriff; Mike Kane, ISA

Chairman Dayley called the meeting to order at 1:32 p.m.

Chairman Dayley clarified the use of call for previous question and general orders.

H 115: **Rep. Goesling** presented **H 115**. This bill is important for protecting the state's most important asset, its children. He yielded his time to **Quinn Perry, Dr. Greg Bailey, David Gomez** and **Stu Hobson**.

Quinn Perry, Policy Director, Idaho School Boards Association (ISBA). The ISBA had a resolution to support the change in statute and they worked with stakeholders across the state to draft this legislation. The bill makes it possible to treat a threat on a school as seriously as domestic violence, assault and stalking.

Dr. Greg Bailey, Director of Moscow School District, shared the story that was the impetus for this legislation. Last year a 26-year-old man made a social media threat to two Moscow schools. Law enforcement had no way of detaining him because there were no weapons in the home and law enforcement did not witness any wrong doing. This caused chaos and panic throughout the district, including parents wanting to police the schools, calls for arming teachers and high absentee rates. He said it inhibited the positive learning environment that students deserve to have.

David Gomez, Mountain View High School Resource Officer, Meridian Police Department, said there currently are six misdemeanor crimes that allow an arrest when the crime is not committed in the presence of law enforcement. This bill would add school threats to the list of misdemeanor crimes that would allow law enforcement to make an arrest. Officer Gomez said this will allow law enforcement to take a suspect into custody so they can be evaluated and begin receiving mental health treatment if necessary. In answer to questions from the Committee, Officer Gomez explained it is not always the most expedient to secure an arrest warrant. Warrants take time and require specific types of information that may not be easily available initially. This bill would allow law enforcement to assess the situation and take action if they believe there is probable cause and the suspect poses a credible risk to public safety.

Stu Hobson, Ridgeview High School Resource Officer, Nampa Police Department stated this bill provides law enforcement another tool in their tool belt to protect kids. This can help parents feel more secure in sending their kids to school. It also helps smaller communities that don't have as many resources. It allows their law enforcement to take action if warranted.

Paul Stark, Idaho Education Association, spoke **in support of H 115**. He said this bill has the support of the Idaho Sheriff's Association. He explained there is a difference between a search warrant and an arrest warrant. Coming into a person's home is a different portion of the Fourth Amendment. The supreme court has weighed in on warrantless arrests and it does pass Constitutional scrutiny under the Fourth Amendment. If a person is arrested on a warrantless arrest, it is speedily brought before a judge who rules whether the probable cause determination is warranted.

Rep. Marshall stated this bill clearly defines what threats are under Idaho Code §18-3302i and what arises to the threat of a misdemeanor and felony. If there is probable cause that a felony or misdemeanor exists, it gives police the authority to make a quick arrest.

Rep. Goesling requested that **H 115** be sent to General Orders with the following correction: the statute written as "18-902" on line 22 should be written as "18-901".

MOTION:

Rep. Gannon made a motion to send **H 115** to General Orders with a Committee amendment to change the statute written as "18-902" on line 22 to "18-901".

Rep. Marshall said the word "arrested" on line 21 of the bill is inappropriate and suggested it be deleted. **Rep. Goesling** stated he was not prepared to know whether it would change the substance of the bill. **Rep. Chaney** suggested it be drafted as a separate amendment.

VOTE ON MOTION:

Chairman Dayley called for vote on the motion. **Motion carried by voice vote.** **Rep. Zollinger** requested to recorded as voting **NAY**. **Rep. Goesling** will sponsor the bill on the floor.

H 78:

Rep. Kerby presented **H 78**. He explained the goal of the bill is to change people's behavior on their time and money. The Statement of Purpose and Financial Note describe the bill. The program is completely voluntary. He stated the Fiscal Note was done by the LSO budgeting office and some people say this is high, which indicates the usage is very high the first year. He speculates the numbers won't be that high in the first year because it will take some time to catch on. He stated there is a lot of good data to support this program, and according to MADD, recidivism rates decreased by 63% in states with similar programs. **Rep. Kerby** outlined the specifics of the bill and the amendments as they are incorporated in Draft Bill DRELB342 (Attachment 1). He explained he was asked if he would incorporate amendments brought forward by the Transportation Committee Chairman regarding restoring driving privileges as outlined in **RS 26864** (Attachment 2). He requested the bill be sent to General Orders with these recommended Committee amendments.

MOTION:

Rep Chaney made a motion to send **H 78** to General Orders with Committee amendments consistent with **RS 26864** and Draft Bill DRELB342.

Miron Aburusa Mothers Against Drunk Drivers of Southwest Idaho; **Kenden Poole**, CIIM; **Elisa Massoth**, Idaho Association of Criminal Defense Lawyers; and **Michael Kane**, Idaho Sheriff's Association, spoke **in support of H 78**. Their comments included: it helps reduce recidivism; it helps people who live in areas where no public transportation is available; it allows people to take proactive steps to keep their driver's license.

Holly Koole Rebholtz, Idaho Prosecuting Attorneys Association spoke in **opposition** to **H 78**. She stated the association supported the bill last year, but they oppose this bill because it does not require offenders to enter a guilty plea. She stated Oregon's original DUI diversion program did not require a guilty plea and it caused many legal issues that the Legislature needed to amend the law.

Speaking in **opposition** to the motion, **Rep. Marshall** stated almost all prosecutors across the state are against this and he doesn't think it bodes well for the program. He questioned who enforces the provisions of the bill and stated the Problem Solving Courts already have an interlock program. In response to Rep. Marshall's comments, **Rep. Kerby** stated prosecutors across the state are taking a variety of positions and not everyone understands it. He reiterated that a prosecuting attorney doesn't have to use the program. It is optional.

Reps. Wintrow and Gannon spoke in **support** of the motion. Rep. Gannon stated persons charged with a DUI and low access to financial means still need to go to work. This is good for people who are motivated.

**VOTE ON
MOTION:**

Chairman Dayley called for a vote on the motion to send **H 78** to General Orders with Committee amendments. **Motion carried by voice vote.** **Rep. Marshall** requested to be recorded as voting **NAY**. **Rep. Kerby** will sponsor the bill on the floor.

Chairman Dayley called a recess of the Committee at 3:25 p.m.

Chairman Dayley reconvened the meeting at 3:33 p.m.

H 118:

Rep. Chaney presented **H 118**. He explained he was requesting the bill be sent to the amending order so it can incorporate amendments as written in Draft Bill DRRCB243 (Attachment 3). He described the risk assessment algorithms as a computer suggesting to a judge what kind of sentence a person should receive based on a prediction of how that person will behave. This bill does not seek to remove the tool, the purpose of the bill is to remove the ability to conceal errors and retain a defendant's Constitutional rights. He stated this is essentially a civil rights bill because when these systems error, they error against minorities. There has been no standard or transparency. He explained there have been problems in other states. When the systems are challenged, the vendor refuses to hand over information on the basis of the algorithms being a trade secret. He said these tools should be objective and should be free of bias. The bill only relates to pretrial conditions.

In answer to questions from the Committee, **Rep. Chaney** said he was not aware that the Ada County system was an actuarial-based program and not based on algorithms. He explained the state is not getting ahead of itself with this legislation because the Courts like uniformity, but there are any number of programs that could be used and applied differently.

Michael Ekstrand, Boise State University Computer Science Professor testified on behalf of himself and not the university. He spoke in **support** of the bill. He said there are ways to use data to improve outcomes, but it needs to be done carefully. This bill requires the tools be built very carefully and provides the ability to check the work of the vendors to insure the tools behave as advertised. This bill brings many good tools. Validating the system is good and it is not a one and done initiative. Validation needs to be contextual and take Idaho specific conditions into consideration to ensure they do not produce undue bias into Idaho's justice system.

MOTION:

Rep. Ehardt made a motion to send **H 118** to General Orders with Committee amendments consistent with Draft Bill DRRCB243.

Mark Manweiler and Tom Arkoosh Idaho Association of Criminal Defense Attorney's testified **in opposition to H 118**. They stated there is agreement that racial bias is a bad thing, but this bill is a solution that is in search of a problem. All of the data being spoken about are national studies and situations. This is just one of many tools judges use to make decisions on sentences. Mr. Manweiler said he is concerned that the bill doesn't clearly say who is going to validate it, or who will pay for the validation.

**SUBSTITUTE
MOTION:**

Rep. Marshall made a substitute motion to **HOLD H 118** in Committee.

Speaking to the motion, **Rep. Marshall** said it would be virtually impossible that any computer could be free of bias and he would rather trust judges and humans. He stated he would actually support the idea of outlawing these systems all together. He is concerned about the use of artificial intelligence and the impact on due process.

Kathy Griesmyer ACLU Idaho spoke **in support of H 118**. She spoke about the inherent racial bias, error rates and lack of transparency of these systems. Even though Idaho is not racially diverse, blacks and Hispanics are incarcerated at a higher rate. She stated that the ACLU has sued the Idaho Department of Health and Welfare for their use of an algorithm-based tool and it was found to be unconstitutional. An Idaho specific tool is now being evaluated for the Department. She said she shared this story as a point of comparison that if these tools aren't built correctly they can be problematic. She said improvements have been made in the bill and it is good that the tools will need to be revalidated. She said a negative aspect of the bill is it doesn't require a report on the rate of false positives. In answer to questions from the Committee, Ms. Griesmyer said they don't see a risk of lawsuits on the court algorithm programs at this point, but they are tracking cases across the country where algorithms are being challenged for lack of transparency. She said if they had a choice they wouldn't want these tools used in Idaho. However, based on their experience with similar tools, having some sideboards is beneficial.

Jeff Clayton, American Bail Coalition, spoke **in support of H 118**. He said this is one of the hottest topics in pretrial justice right now and if it is dealt with today, or in the future, it is coming down the path. There are three or four people who are building these and they are being built the same way.

Michael Kane, Idaho Sheriff's Association spoke **in support of H 118**. This is not a finding of guilt. It is only information that helps judges determine whether defendants can be let out of jail pending trial. He said **Rep. Chaney** is addressing their concerns about not restricting the Ada County system with an amendment. He said it is not a perfect bill and there are tweaks to be made, but they are committed to keep working on it.

Rep. Chaney closed the debate by saying Idaho is not ahead of itself on this issue. There are 30+ counties using a system and not all are using the Ada County system. He said the technology is here now and the state needs to see what is inside the black box to ensure it acts appropriately.

Speaking to the substitute motion, **Rep. Wintrow** said it would be beneficial to bring together a working group to find the best solution. **Rep. Gannon** said it would be better to consider this bill in conjunction with what's coming down the pike.

**AMENDED
SUBSTITUTE
MOTION:**

Rep. Zollinger made an amended substitute motion to send the **H 118** to General Orders.

Rep. Chaney said he supports the amended substitute motion and would work with anyone on the Committee who would like to have input into the amendment.

**VOTE ON
AMENDED
SUBSTITUTE
MOTION:**

Chairman Dayley called for a roll call vote on the amended substitute motion. **Motion carried by a vote of 7 AYE, 6 NAY and 5 Absent/Excused. Voting in favor of the motion: Reps. Chaney, Zito, Zollinger, Ehardt, Young, Dayley. Voting in opposition to the motion: Reps. Goesling, Hartgen, Marshall, Gannon, Wintrow, Davis. Reps. Kerby, Amador, Ricks, Troy, McCrostie were Absent/Excused. Rep. Chaney** will sponsor the bill on floor.

ADJOURN:

There being no further business to come before the Committee, the meeting adjourned at 5:21 p.m.

Representative Dayley
Chair

Wendy Carver-Herbert
Secretary

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LEGISLATURE OF THE STATE OF IDAHO
Sixty-fifth Legislature First Regular Session - 2019

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AN ACT

RELATING TO CRIMES AND PUNISHMENTS; AMENDING SECTION 18-8002, IDAHO CODE, TO PROVIDE THAT CERTAIN INFORMATION SHALL BE GIVEN AT THE TIME OF EVIDENTIARY TESTING FOR ALCOHOL, DRUGS, OR OTHER INTOXICATING SUBSTANCES, TO PROVIDE THAT PERSONS PARTICIPATING IN A DIVERSION PROGRAM MAY BE ELIGIBLE FOR CERTAIN DRIVING PRIVILEGES, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 18-8002A, IDAHO CODE, TO REVISE PROVISIONS REGARDING CERTAIN INFORMATION GIVEN TO PERSONS UNDERGOING EVIDENTIARY TESTING FOR ALCOHOL, DRUGS, OR OTHER INTOXICATING SUBSTANCES, TO PROVIDE FOR DRIVING PRIVILEGES IN A DIVERSION PROGRAM, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 18-8005, IDAHO CODE, TO REVISE PROVISIONS REGARDING PENALTIES; AMENDING SECTION 18-8008, IDAHO CODE, TO REVISE THE DEFINITION OF IGNITION INTERLOCK SYSTEM AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 18-8010, IDAHO CODE, TO PROVIDE THAT A PROSECUTING ATTORNEY WHO ESTABLISHES A DIVERSION PROGRAM MAY USE CERTAIN MONEYS; AMENDING SECTION 19-403, IDAHO CODE, TO PROVIDE THAT CERTAIN MISDEMEANOR CASES SHALL BE REFILED NO LATER THAN TWO YEARS AFTER DISMISSAL AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 19-3506, IDAHO CODE, TO PROVIDE THAT DISMISSED MISDEMEANOR CASES MAY BE REFILED UNDER CERTAIN CIRCUMSTANCES; AMENDING CHAPTER 35, TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-3507, IDAHO CODE, TO DEFINE A TERM AND TO PROVIDE LEGISLATIVE INTENT; AMENDING CHAPTER 35, TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-3508, IDAHO CODE, TO PROVIDE ELIGIBILITY REQUIREMENTS FOR A DIVERSION PROGRAM; AMENDING CHAPTER 35, TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-3509, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING DIVERSION PROGRAMS; AND AMENDING SECTION 20-617, IDAHO CODE, TO PROVIDE THAT PERSONS PARTICIPATING IN DIVERSION PROGRAMS MAY BE REQUIRED TO PERFORM CERTAIN LABOR.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-8002, Idaho Code, be, and the same is hereby amended to read as follows:

18-8002. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF DRUGS OR OTHER INTOXICATING SUBSTANCES -- PENALTY AND SUSPENSION UPON REFUSAL OF TESTS. (1) Any person who drives or is in actual physical control of a motor vehicle in this state shall be deemed to have given his consent to evidentiary testing for concentration of alcohol as defined in section 18-8004, Idaho Code, and to have given his consent to evidentiary testing for the presence of drugs or other intoxicating substances, provided that such testing is administered at the request of a peace officer having reasonable grounds to believe that person has been driving or was in actual physical control of a motor vehicle in violation of the provisions of section 18-8004 or 18-8006, Idaho Code.

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1 (2) Such person shall not have the right to consult with an attorney be-
2 fore submitting to such evidentiary testing.

3 (3) At the time evidentiary testing for concentration of alcohol or for
4 the presence of drugs or other intoxicating substances is requested, the
5 person shall be informed that if he refuses to submit to or if he fails to
6 complete evidentiary testing:

7 (a) He is subject to a civil penalty of two hundred fifty dollars (\$250)
8 for refusing to take the test;

9 (b) He is subject to mandatory installation of a state-approved igni-
10 tion interlock system, at his expense, on all of the motor vehicles op-
11 erated by him for a period to end one (1) year following the end of the
12 suspension period;

13 (c) He has the right to request a hearing within seven (7) days to show
14 cause why he refused to submit to, or complete evidentiary testing;

15 (d) If he does not request a hearing or does not prevail at the hearing,
16 the court shall sustain the civil penalty and shall order the required
17 installation of a state-approved ignition interlock system on all motor
18 vehicles operated by him and his driver's license will be suspended ab-
19 solutely for one (1) year if this is his first refusal and two (2) years
20 if this is his second refusal within ten (10) years;

21 (e) Provided however, if he is admitted to a problem solving court pro-
22 gram and has served at least forty-five (45) days of an absolute sus-
23 pension of driving privileges, then he may be eligible for a restricted
24 permit for the purpose of getting to and from work, school, or an alcohol
25 treatment program, but only if a state-approved ignition interlock sys-
26 tem has been installed, at his expense, on all motor vehicles operated
27 by him; and

28 ~~(f) Provided however, if he is admitted to a diversion program pursuant~~
29 ~~to section 19-3509, Idaho Code, then he may be eligible for a restricted~~
30 ~~permit for the purpose of getting to and from work, school, medical ap-~~
31 ~~pointments, or a treatment program; and~~

32 (g) After submitting to evidentiary testing, he may, when practicable,
33 at his own expense, have additional tests made by a person of his own
34 choosing.

35 (4) If the motorist refuses to submit to or complete evidentiary test-
36 ing after the information has been given in accordance with subsection (3) of
37 this section:

38 (a) He shall be fined a civil penalty of two hundred fifty dollars
39 (\$250);

40 (b) The court shall direct the installation, at his expense, of a state-
41 approved ignition interlock system meeting the requirements set forth
42 in section 18-8008, Idaho Code, on all motor vehicles operated by him
43 for a period of one (1) year following the end of the suspension period;

44 (c) A written request may be made within seven (7) calendar days for a
45 hearing before the court; if requested, the hearing must be held within
46 thirty (30) days of the date of service unless this period is, for good
47 cause shown, extended by the court for one (1) additional thirty (30)
48 day period. The hearing shall be limited to the question of why the
49 defendant did not submit to, or complete, evidentiary testing, and the
50 burden of proof shall be upon the defendant; the court shall sustain

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1 a two hundred fifty dollar (\$250) civil penalty immediately, suspend
2 all the defendant's driving privileges immediately for one (1) year for
3 a first refusal and two (2) years for a second refusal within ten (10)
4 years and direct the installation, at his expense, of a state-approved
5 ignition interlock system meeting the requirements set forth in section
6 18-8008, Idaho Code, on all motor vehicles operated by him for a period
7 to end one (1) year following the end of the suspension period, unless it
8 finds that the peace officer did not have legal cause to stop and request
9 him to take the test or that the request violated his civil rights;

10 (d) If a hearing is not requested by written notice to the court con-
11 cerned within seven (7) calendar days, upon receipt of a sworn statement
12 by the peace officer of the circumstances of the refusal, the court
13 shall sustain a two hundred fifty dollar (\$250) civil penalty, suspend
14 the defendant's driving privileges for one (1) year for a first refusal
15 and two (2) years for a second refusal within ten (10) years, during
16 which time he shall have absolutely no driving privileges of any kind,
17 and direct the installation of a state-approved ignition interlock
18 system, at his expense, meeting the requirements set forth in section
19 18-8008, Idaho Code, on all motor vehicles operated by him for a period
20 to end one (1) year following the end of the suspension period;

21 (e) Notwithstanding the provisions of paragraphs (c) and (d) of this
22 subsection, if the defendant is enrolled in and is a participant in good
23 standing in a drug court or mental health court approved by the supreme
24 court drug court and mental health court coordinating committee under
25 the provisions of chapter 56, title 19, Idaho Code, or other similar
26 problem solving court utilizing community-based sentencing alterna-
27 tives, then the defendant shall be eligible for restricted noncomm-
28 ercial driving privileges for the purpose of getting to and from work,
29 school or an alcohol treatment program, which may be granted by the pre-
30 siding judge of the drug court or mental health court or other similar
31 problem solving court, provided that the defendant has served a period
32 of absolute suspension of driving privileges of at least forty-five
33 (45) days, that a state-approved ignition interlock system meeting the
34 requirements set forth in section 18-8008, Idaho Code, is installed,
35 at his expense, on all motor vehicles operated by him for a period to
36 end one (1) year following the end of the suspension period and that the
37 defendant has shown proof of financial responsibility as defined and
38 in the amounts specified in section 49-117, Idaho Code, provided that
39 the restricted noncommercial driving privileges and the requirement
40 of a state-approved ignition interlock system may be continued if the
41 defendant successfully completes the drug court, mental health court or
42 other similar problem solving court, and that the court may revoke such
43 privileges for failure to comply with the terms of probation or with the
44 terms and conditions of the drug court, mental health court or other
45 similar problem solving court program; and

46 (f) Notwithstanding the provisions of paragraphs (c) and (d) of this
47 subsection, if a person is a participant in good standing in a diver-
48 sion program pursuant to section 19-3509, Idaho Code, then the person
49 may be eligible for restricted noncommercial driving privileges for the
50 purpose of getting to and from work, school, medical appointments, or a

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1 treatment program, which privileges may be granted by the administrator
2 of the diversion program; and

3 (g) After submitting to evidentiary testing at the request of the peace
4 officer, he may, when practicable, at his own expense, have additional
5 tests made by a person of his own choosing. The failure or inability to
6 obtain an additional test or tests by a person shall not preclude the ad-
7 mission of results of evidentiary testing for alcohol concentration or
8 for the presence of drugs or other intoxicating substances taken at the
9 direction of the peace officer unless the additional test was denied by
10 the peace officer.

11 (5) Any sustained sanction under this section or section 18-8002A,
12 Idaho Code, shall be a sanction separate and apart from any other sanction
13 imposed for a violation of other Idaho motor vehicle codes or for a con-
14 viction of an offense pursuant to this chapter and may be appealed to the
15 district court.

16 (6) No hospital, hospital officer, agent, or employee, or health care
17 professional licensed by the state of Idaho, whether or not such person has
18 privileges to practice in the hospital in which a body fluid sample is ob-
19 tained or an evidentiary test is made, shall incur any civil or criminal li-
20 ability for any act arising out of administering an evidentiary test for al-
21 cohol concentration or for the presence of drugs or other intoxicating sub-
22 stances at the request or order of a peace officer in the manner described in
23 this section and section 18-8002A, Idaho Code; provided that nothing in this
24 section shall relieve any such person or legal entity from civil liability
25 arising from the failure to exercise the community standard of care.

26 (a) This immunity extends to any person who assists any individual to
27 withdraw a blood sample for evidentiary testing at the request or order
28 of a peace officer, which individual is authorized to withdraw a blood
29 sample under the provisions of section 18-8003, Idaho Code, regardless
30 of the location where the blood sample is actually withdrawn.

31 (b) A peace officer is empowered to order an individual authorized in
32 section 18-8003, Idaho Code, to withdraw a blood sample for evidentiary
33 testing when the peace officer has probable cause to believe that the
34 suspect has committed any of the following offenses:

35 (i) Aggravated driving under the influence of alcohol, drugs or
36 other intoxicating substances as provided in section 18-8006,
37 Idaho Code;

38 (ii) Vehicular manslaughter as provided in subsection (3) (a), (b)
39 and (c) of section 18-4006, Idaho Code;

40 (iii) Aggravated operating of a vessel on the waters of the state
41 while under the influence of alcohol, drugs or other intoxicating
42 substances as provided in section 67-7035, Idaho Code; or

43 (iv) Any criminal homicide involving a vessel on the waters of the
44 state while under the influence of alcohol, drugs or other intoxi-
45 cating substances.

46 (c) Nothing herein shall limit the discretion of the hospital admin-
47 istration to designate the qualified hospital employee responsible to
48 withdraw the blood sample.

49 (d) The law enforcement agency that requests or orders withdrawal of
50 the blood sample shall pay the reasonable costs to withdraw such blood

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1 sample, perform laboratory analysis, preserve evidentiary test re-
2 sults, and testify in judicial proceedings. The court may order resti-
3 tution pursuant to the provisions of section 18-8003(2), Idaho Code.

4 (e) The withdrawal of the blood sample may be delayed or terminated if:

5 (i) In the reasonable judgment of the hospital personnel, with-
6 drawal of the blood sample may result in serious bodily injury to
7 hospital personnel or other patients; or

8 (ii) The licensed health care professional treating the suspect
9 believes the withdrawal of the blood sample is contraindicated be-
10 cause of the medical condition of the suspect or other patients.

11 (7) "Actual physical control" as used in this section and section
12 18-8002A, Idaho Code, shall be defined as being in the driver's position of
13 the motor vehicle with the motor running or with the motor vehicle moving.

14 (8) Any written notice required by this section shall be effective upon
15 mailing.

16 (9) For the purposes of this section and section 18-8002A, Idaho Code,
17 "evidentiary testing" shall mean a procedure or test or series of proce-
18 dures or tests, including the additional test authorized in subsection (10)
19 of this section, utilized to determine the concentration of alcohol or the
20 presence of drugs or other intoxicating substances in a person.

21 (10) A person who submits to a breath test for alcohol concentration,
22 as defined in subsection (4) of section 18-8004, Idaho Code, may also be re-
23 quested to submit to a second evidentiary test of blood or urine for the pur-
24 pose of determining the presence of drugs or other intoxicating substances
25 if the peace officer has reasonable cause to believe that a person was driv-
26 ing under the influence of any drug or intoxicating substance or the combined
27 influence of alcohol and any drug or intoxicating substance. The peace of-
28 ficer shall state in his or her report the facts upon which that belief is
29 based.

30 (11) Notwithstanding any other provision of law to the contrary, the
31 civil penalty imposed under the provisions of this section must be paid, as
32 ordered by the court, to the county justice fund or the county current ex-
33 pense fund where the incident occurred. If a person does not pay the civil
34 penalty imposed as provided in this section within thirty (30) days of the
35 imposition, unless this period has been extended by the court for good cause
36 shown, the prosecuting attorney representing the political subdivision
37 where the incident occurred may petition the court in the jurisdiction where
38 the incident occurred to file the order imposing the civil penalty as an or-
39 der of the court. Once entered, the order may be enforced in the same manner
40 as a final judgment of the court. In addition to the civil penalty, attor-
41 ney's fees, costs and interest may be assessed against any person who fails
42 to pay the civil penalty.

43 (12) Upon motion of the person required to install an ignition inter-
44 lock device pursuant to subsection (4)(b) of this section, a court in its
45 discretion may relieve the person from the installation of the device where
46 the court finds it clear and convincing that the person will not present a
47 danger to the public or that there are exceptional or mitigating circum-
48 stances demonstrating that installation of the device is unnecessary or
49 unwarranted. Financial hardship, standing alone, is not an exceptional or
50 mitigating circumstance.

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1 (13) A court may determine that an offender is eligible to utilize
2 available funds from the court interlock device and electronic monitoring
3 device fund, as outlined in section 18-8010, Idaho Code, for the instal-
4 lation and operation of an ignition interlock device, based on evidence of
5 financial hardship.

6 (14) As used in this section, "at his expense" includes the cost of ob-
7 taining, installing, using and maintaining an ignition interlock system.

8 SECTION 2. That Section 18-8002A, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 18-8002A. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF
11 DRUGS OR OTHER INTOXICATING SUBSTANCES -- SUSPENSION UPON FAILURE OF
12 TESTS. (1) Definitions. As used in this section:

13 (a) "Actual physical control" means being in the driver's position of a
14 motor vehicle with the motor running or with the vehicle moving.

15 (b) "Administrative hearing" means a hearing conducted by a hearing
16 officer to determine whether a suspension imposed by the provisions of
17 this section should be vacated or sustained.

18 (c) "Department" means the Idaho transportation department and, as the
19 context requires, shall be construed to include any agent of the depart-
20 ment designated by rule as hereinafter provided.

21 (d) "Director" means the director of the Idaho transportation depart-
22 ment.

23 (e) "Evidentiary testing" means a procedure or test or series of proce-
24 dures or tests utilized to determine the concentration of alcohol or the
25 presence of drugs or other intoxicating substances in a person, includ-
26 ing additional testing authorized by subsection (6) of this section. An
27 evidentiary test for alcohol concentration shall be based on a formula
28 of grams of alcohol per one hundred (100) cubic centimeters of blood,
29 per two hundred ten (210) liters of breath, or per sixty-seven (67) mil-
30 lililiters of urine. Analysis of blood, breath or urine for the purpose
31 of determining alcohol concentration shall be performed by a laboratory
32 operated by the Idaho state police or by a laboratory approved by the
33 Idaho state police under the provisions of approval and certification
34 standards to be set by the Idaho state police, or by any other method ap-
35 proved by the Idaho state police. Notwithstanding any other provision
36 of law or rule of court, the results of any test for alcohol concentra-
37 tion and records relating to calibration, approval, certification or
38 quality control performed by a laboratory operated and approved by the
39 Idaho state police or by any other method approved by the Idaho state po-
40 lice shall be admissible in any proceeding in this state without the ne-
41 cessity of producing a witness to establish the reliability of the test-
42 ing procedure for examination.

43 (f) "Hearing officer" means a person designated by the department to
44 conduct administrative hearings. The hearing officer shall have au-
45 thority to administer oaths, examine witnesses and take testimony,
46 receive relevant evidence, issue subpoenas, regulate the course and
47 conduct of the hearing and make a final ruling on the issues before him.

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(g) "Hearing request" means a request for an administrative hearing on the suspension imposed by the provisions of this section.

(2) Information to be given. At the time of evidentiary testing for concentration of alcohol or for the presence of drugs or other intoxicating substances is requested, the person shall be informed that if the person refuses to submit to or fails to complete evidentiary testing, or if the person submits to and completes evidentiary testing and the test results indicate an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code, the person shall be informed substantially as follows (but need not be informed verbatim):

If you refuse to submit to or if you fail to complete and pass evidentiary testing for alcohol or other intoxicating substances:

(a) The peace officer will issue a notice of suspension and you will be required to install, at your expense, a state-approved ignition interlock system on all motor vehicles you operate for a period to end one (1) year following the end of the suspension period;

(b) You have the right to request a hearing within seven (7) days of the notice of suspension of your driver's license to show cause why you refused to submit to or to complete and pass evidentiary testing and why your driver's license should not be suspended;

(c) If you refused or failed to complete evidentiary testing and do not request a hearing before the court or do not prevail at the hearing, your driver's license will be suspended and you will be required to install, at your expense, a state-approved ignition interlock system on all motor vehicles you operate for a period to end one (1) year following the end of the suspension period. The suspension will be for one (1) year if this is your first refusal. The suspension will be for two (2) years if this is your second refusal within ten (10) years. You will not be able to obtain a temporary restricted license during that period;

(d) If you complete evidentiary testing and fail the testing and do not request a hearing before the department or do not prevail at the hearing, your driver's license will be suspended and you will be required to install, at your expense, a state-approved ignition interlock system on all motor vehicles you operate for a period to end one (1) year following the end of the suspension period. This suspension will be for ninety (90) days if this is your first failure of evidentiary testing, but you may request restricted noncommercial vehicle driving privileges after the first thirty (30) days. The suspension will be for one (1) year if this is your second failure of evidentiary testing within five (5) years. You will not be able to obtain a temporary restricted license during that period;

(e) However, if you are admitted to a problem solving court program and have served at least forty-five (45) days of an absolute suspension of driving privileges, you may be eligible for a restricted permit for the purpose of getting to and from work, school or an alcohol treatment program, but only if you install, at your expense, a state-approved ignition interlock system on all motor vehicles you operate; and

(f) However, if you are admitted to a diversion program under section 19-3509, Idaho Code, you may be eligible for a restricted permit for the

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1 purpose of getting to and from work, school, medical appointments, or a
2 treatment program; and

3 (g) After submitting to evidentiary testing, you may, when practica-
4 ble, at your own expense, have additional tests made by a person of your
5 own choosing.

6 (3) Rulemaking authority of the Idaho state police. The Idaho state po-
7 lice may, pursuant to chapter 52, title 67, Idaho Code, prescribe by rule:

8 (a) What testing is required to complete evidentiary testing under this
9 section; and

10 (b) What calibration or checking of testing equipment must be performed
11 to comply with the department's requirements. Any rules of the Idaho
12 state police shall be in accordance with the following: a test for alco-
13 hol concentration in breath as defined in section 18-8004, Idaho Code,
14 and subsection (1) (e) of this section will be valid for the purposes of
15 this section if the breath alcohol testing instrument was approved for
16 testing by the Idaho state police in accordance with section 18-8004,
17 Idaho Code, at any time within ninety (90) days before the evidentiary
18 testing. A test for alcohol concentration in blood or urine as defined
19 in section 18-8004, Idaho Code, that is reported by the Idaho state po-
20 lice or by any laboratory approved by the Idaho state police to perform
21 this test will be valid for the purposes of this section.

22 (4) Suspension and ignition interlock system.

23 (a) Upon receipt of the sworn statement of a peace officer that there
24 existed legal cause to believe a person had been driving or was in actual
25 physical control of a motor vehicle while under the influence of alco-
26 hol, drugs or other intoxicating substances and that the person submit-
27 ted to a test and the test results indicated an alcohol concentration or
28 the presence of drugs or other intoxicating substances in violation of
29 section 18-8004, 18-8004C or 18-8006, Idaho Code, the department shall
30 suspend the person's driver's license, driver's permit, driving privi-
31 leges or nonresident driving privileges:

32 (i) For a period of ninety (90) days for a first failure of ev-
33 identiary testing under the provisions of this section. The
34 first thirty (30) days of the suspension shall be absolute and the
35 person shall have absolutely no driving privileges of any kind.
36 Restricted noncommercial vehicle driving privileges applicable
37 during the remaining sixty (60) days of the suspension may be re-
38 quested as provided in subsection (9) of this section.

39 (ii) For a period of one (1) year for a second and any subsequent
40 failure of evidentiary testing under the provisions of this sec-
41 tion within the immediately preceding five (5) years. No driving
42 privileges of any kind shall be granted during the suspension im-
43 posed pursuant to this ~~subsection~~ subparagraph.

44 The department shall also direct the installation, at the offender's
45 expense, of a state-approved ignition interlock system meeting the re-
46 quirements of section 18-8008, Idaho Code, on all motor vehicles oper-
47 ated by the offender for a period to end one (1) year following the end of
48 the suspension period.

49 The person may request an administrative hearing on the suspension as
50 provided in subsection (7) of this section. Any right to contest the

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1 suspension shall be waived if a hearing is not requested as therein pro-
2 vided.

3 (b) The suspension shall become effective thirty (30) days after ser-
4 vice upon the person of the notice of suspension and notice of the re-
5 quirement to install, at his expense, a state-approved ignition inter-
6 lock system for a period to end one (1) year following the end of the sus-
7 pension period. The notice shall be in a form provided by the department
8 and shall state:

9 (i) The reason and statutory grounds for the suspension and the
10 requirement to install the ignition interlock system;

11 (ii) The effective date of the suspension and the requirement to
12 install the ignition interlock system;

13 (iii) The suspension periods to which the person may be subject as
14 provided in paragraph (a) of this subsection;

15 (iv) The procedures for obtaining restricted noncommercial vehi-
16 cle driving privileges;

17 (v) The rights of the person to request an administrative hear-
18 ing on the suspension and that, if an administrative hearing is not
19 requested within seven (7) days of service of the notice of suspen-
20 sion and notice of the requirement to install the ignition inter-
21 lock system, the right to contest the suspension shall be waived;

22 (vi) The procedures for obtaining an administrative hearing on
23 the suspension;

24 (vii) The right to judicial review of the hearing officer's deci-
25 sion on the suspension and the procedures for seeking such review.

26 (c) Notwithstanding the provisions of paragraph(a)(i) and (ii) of
27 this subsection, a person who is enrolled in and is a participant in
28 good standing in a drug court or mental health court approved by the
29 supreme court drug court and mental health court coordinating commit-
30 tee under the provisions of chapter 56, title 19, Idaho Code, or other
31 similar problem solving court utilizing community-based sentencing
32 alternatives shall be eligible for restricted noncommercial driving
33 privileges for the purpose of getting to and from work, school or an al-
34cohol treatment program, which may be granted by the presiding judge of
35 the drug court or mental health court or other similar problem solving
36 court, provided that the offender has served a period of absolute sus-
37 pension of driving privileges of at least forty-five (45) days, that a
38 state-approved ignition interlock system is installed, at his expense,
39 on all motor vehicles operated by him for a period to end one (1) year
40 following the end of the suspension period and that the offender has
41 shown proof of financial responsibility as defined and in the amounts
42 specified in section 49-117, Idaho Code, provided that the restricted
43 noncommercial driving privileges may be continued if the offender
44 successfully completes the drug court, mental health court or other
45 similar problem solving court, and that the court may revoke such privi-
46 leges for failure to comply with the terms of probation or with the terms
47 and conditions of the drug court, mental health court or other similar
48 problem solving court program.

49 (d) Notwithstanding the provisions of paragraph (a)(i) and (ii) of
50 this subsection, a person who is enrolled in and is a participant in

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1 good standing in a diversion program pursuant to section 19-3509, Idaho
2 Code, may be eligible for restricted noncommercial driving privileges
3 for the purpose of getting to and from work, school, medical appoint-
4 ments, or a treatment program, which privileges may be granted by the
5 administrator of the diversion program.

6 (5) Service of suspension and ignition interlock system by peace of-
7 ficer or the department. If the driver submits to evidentiary testing after
8 the information in subsection (2) of this section has been provided and
9 the results of the test indicate an alcohol concentration or the presence
10 of drugs or other intoxicating substances in violation of the provisions of
11 section 18-8004, 18-8004C or 18-8006, Idaho Code:

12 (a) The peace officer shall, acting on behalf of the department, serve
13 the person with a notice of suspension and notice of the requirement to
14 install, at his expense, a state-approved ignition interlock system for
15 a period to end one (1) year following the end of the suspension period
16 in the form and containing the information required under subsection
17 (4) of this section. The department may serve the person with a notice
18 of suspension and the requirement to install the ignition interlock
19 system if the peace officer failed to do so or failed to include the date
20 of service as provided in subsection (4) (b) of this section.

21 (b) Within five (5) business days following service of a notice of sus-
22 pension and notice of the requirement to install the ignition interlock
23 system, the peace officer shall forward to the department a copy of the
24 completed notice of suspension and notice of the requirement to install
25 the ignition interlock system form upon which the date of service upon
26 the driver shall be clearly indicated, a certified copy or duplicate
27 original of the results of all tests for alcohol concentration, as shown
28 by analysis of breath administered at the direction of the peace offi-
29 cer, and a sworn statement of the officer, which may incorporate any
30 arrest or incident reports relevant to the arrest and evidentiary test-
31 ing setting forth:

32 (i) The identity of the person;

33 (ii) Stating the officer's legal cause to stop the person;

34 (iii) Stating the officer's legal cause to believe that the per-
35 son had been driving or was in actual physical control of a motor
36 vehicle while under the influence of alcohol, drugs or other in-
37 toxicating substances in violation of the provisions of section
38 18-8004, 18-8004C or 18-8006, Idaho Code;

39 (iv) That the person was advised of the consequences of taking and
40 failing the evidentiary test as provided in subsection (2) of this
41 section;

42 (v) That the person was lawfully arrested;

43 (vi) That the person was tested for alcohol concentration, drugs
44 or other intoxicating substances as provided in this chapter, and
45 that the results of the test indicated an alcohol concentration or
46 the presence of drugs or other intoxicating substances in viola-
47 tion of the provisions of section 18-8004, 18-8004C or 18-8006,
48 Idaho Code.

49 If an evidentiary test of blood or urine was administered rather than
50 a breath test, the peace officer or the department shall serve the no-

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1 tice of suspension once the results are received. The sworn statement
2 required in this subsection shall be made on forms in accordance with
3 rules adopted by the department.

4 (c) The department may serve the person with a notice of suspension if
5 the peace officer failed to issue the notice of suspension or failed to
6 include the date of service as provided in subsection (4) (b) of this
7 section.

8 (6) Additional tests. After submitting to evidentiary testing at the
9 request of the peace officer, the person may, when practicable, at his own
10 expense, have additional tests for alcohol concentration or for the presence
11 of drugs or other intoxicating substances made by a person of his own choos-
12 ing. The person's failure or inability to obtain additional tests shall not
13 preclude admission of the results of evidentiary tests administered at the
14 direction of the peace officer unless additional testing was denied by the
15 peace officer.

16 (7) Administrative hearing on suspension. A person who has been served
17 with a notice of suspension and notice of the requirement to install the ig-
18 nition interlock system after submitting to an evidentiary test may request
19 an administrative hearing on the suspension before a hearing officer desig-
20 nated by the department. The hearing may be held only on the suspension and
21 not on the requirement to install an ignition interlock system. The request
22 for hearing shall be in writing and must be received by the department within
23 seven (7) calendar days of the date of service upon the person of the notice
24 of suspension and notice of the requirement to install the ignition inter-
25 lock system and shall include what issue or issues shall be raised at the
26 hearing. The date on which the hearing request was received shall be noted
27 on the face of the request.

28 If a hearing is requested, the hearing shall be held within twenty (20)
29 days of the date the hearing request was received by the department unless
30 this period is, for good cause shown, extended by the hearing officer for a
31 ten (10) day period. Such extension shall not operate as a stay of the sus-
32 pension, notwithstanding an extension of the hearing date beyond such thirty
33 (30) day period. Written notice of the date and time of the hearing shall
34 be sent to the party requesting the hearing at least seven (7) days prior to
35 the scheduled hearing date. The department may conduct all hearings by tele-
36 phone if each participant in the hearing has an opportunity to participate in
37 the entire proceeding while it is taking place.

38 The hearing shall be recorded. The sworn statement of the arresting of-
39 ficer, and the copy of the notice of suspension and the notice of the require-
40 ment to install the ignition interlock system issued by the officer shall
41 be admissible at the hearing without further evidentiary foundation. The
42 results of any tests for alcohol concentration or the presence of drugs or
43 other intoxicating substances by analysis of blood, urine or breath adminis-
44 tered at the direction of the peace officer and the records relating to cal-
45 ibration, certification, approval or quality control pertaining to equip-
46 ment utilized to perform the tests shall be admissible as provided in section
47 18-8004(4), Idaho Code. The arresting officer shall not be required to par-
48 ticipate unless directed to do so by a subpoena issued by the hearing offi-
49 cer.

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1 The burden of proof shall be on the person requesting the hearing. The
2 hearing officer shall not vacate the suspension unless he finds, by a preponderance of the evidence, that:

3 (a) The peace officer did not have legal cause to stop the person; or

4 (b) The officer did not have legal cause to believe the person had been
5 driving or was in actual physical control of a vehicle while under the
6 influence of alcohol, drugs or other intoxicating substances in violation
7 of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho
8 Code; or

9 (c) The test results did not show an alcohol concentration or the presence
10 of drugs or other intoxicating substances in violation of section
11 18-8004, 18-8004C or 18-8006, Idaho Code; or

12 (d) The tests for alcohol concentration, drugs or other intoxicating
13 substances administered at the direction of the peace officer were not
14 conducted in accordance with the requirements of section 18-8004(4),
15 Idaho Code, or the testing equipment was not functioning properly when
16 the test was administered; or

17 (e) The person was not informed of the consequences of submitting to evidentiary testing as required in subsection (2) of this section.

18 If the hearing officer finds that the person has not met his burden of proof,
19 he shall sustain the suspension. The hearing officer shall make findings of
20 fact and conclusions of law and shall enter an order vacating or sustaining
21 the suspension. The findings of fact, conclusions of law and order entered
22 by the hearing officer shall be considered a final order pursuant to the provisions of chapter 52, title 67, Idaho Code, except that motions for reconsideration of such order shall be allowed and new evidence can be submitted.

23 The facts as found by the hearing officer shall be independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect the suspension and the requirement to install the ignition interlock system required to be imposed under the provisions of this section. If a license is suspended under this section and the person is also convicted on criminal charges arising out of the same occurrence for a violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, both the suspension under this section and the suspension imposed pursuant to the provisions of section 18-8005 or 18-8006, Idaho Code, shall be imposed, but the periods of suspension shall run concurrently, with the total period of suspension not to exceed the longer of the applicable suspension periods, unless the court ordering the suspension in the criminal case orders to the contrary.

24 (8) Judicial review. A party aggrieved by the decision of the hearing officer may seek judicial review of the decision in the manner provided for judicial review of final agency action provided in chapter 52, title 67, Idaho Code. Upon motion of the person required to install an ignition interlock device pursuant to subsection (4) (a) of this section, a court in its discretion may relieve the person from the installation of the device where the court finds it clear and convincing that the person will not present a danger to the public or that there are exceptional or mitigating circumstances demonstrating that installation of the device is unnecessary or unwarranted. Financial hardship, standing alone, is not an exceptional or

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1 mitigating circumstance. A court may determine that an offender is eligible
2 to utilize available funds from the court interlock device and electronic
3 monitoring device fund, as outlined in section 18-8010, Idaho Code, for the
4 installation and operation of an ignition interlock device, based on evi-
5 dence of financial hardship.

6 (9) Restricted noncommercial vehicle driving privileges. A person
7 served with a notice of suspension for ninety (90) days pursuant to this
8 section may apply to the department for restricted noncommercial vehicle
9 driving privileges, to become effective after the thirty (30) day absolute
10 suspension has been completed. The request may be made at any time after ser-
11 vice of the notice of suspension. Restricted noncommercial vehicle driving
12 privileges will be issued for the person to travel to and from work and for
13 work purposes not involving operation of a commercial vehicle, to attend an
14 alternative high school, work on a GED, for postsecondary education, or to
15 meet the medical needs of the person or his family if the person is eligible
16 for restricted noncommercial vehicle driving privileges. Any person whose
17 driving privileges are suspended under the provisions of this chapter may be
18 granted privileges to drive a noncommercial vehicle but shall not be granted
19 privileges to operate a commercial motor vehicle.

20 (10) As used in this section, "at his expense," "at your expense" and "at
21 the offender's expense" include the cost of obtaining, installing, using and
22 maintaining an ignition interlock system.

23 (11) Rules. The department may adopt rules under the provisions of
24 chapter 52, title 67, Idaho Code, deemed necessary to implement the provi-
25 sions of this section.

26 SECTION 3. That Section 18-8005, Idaho Code, be, and the same is hereby
27 amended to read as follows:

28 18-8005. PENALTIES. (1) Any person who pleads guilty to or is found
29 guilty of a violation of the provisions of section 18-8004(1)(a), Idaho
30 Code, for the first time is guilty of a misdemeanor; and, except as provided
31 in section 18-8004C, Idaho Code:

32 (a) May be sentenced to jail for a term not to exceed six (6) months;

33 (b) May be fined an amount not to exceed one thousand dollars (\$1,000);

34 (c) Shall be advised by the court in writing at the time of sentencing
35 of the penalties that will be imposed for subsequent violations of the
36 provisions of section 18-8004, Idaho Code, which advice shall be signed
37 by the defendant, and a copy retained by the court and another copy re-
38 tained by the prosecuting attorney;

39 (d) Shall have his driving privileges suspended by the court for a pe-
40 riod of thirty (30) days, which shall not be reduced and during which
41 thirty (30) day period absolutely no driving privileges of any kind may
42 be granted. After the thirty (30) day period of absolute suspension of
43 driving privileges has passed, the defendant shall have driving privi-
44 leges suspended by the court for an additional period of at least sixty
45 (60) days, not to exceed one hundred fifty (150) days, during which
46 the defendant may request restricted driving privileges that the court
47 may allow, if the defendant shows by a preponderance of the evidence

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1 that driving privileges are necessary for his employment or for family
2 health needs; and

3 (e) Unless an exception is granted pursuant to section 18-8002(12),
4 Idaho Code, shall within ten (10) days following the end of the manda-
5 tory suspension period have a state-approved ignition interlock system
6 meeting the requirements of section 18-8008, Idaho Code, installed, at
7 his expense, on all motor vehicles operated by him for a period to end
8 one (1) year following the end of the suspension period. A court may
9 determine that an offender is eligible to utilize available funds from
10 the court interlock device and electronic monitoring device fund, as
11 outlined in section 18-8010, Idaho Code, for the installation and oper-
12 ation of an ignition interlock device, based on evidence of financial
13 hardship.

14 (2) Any person who pleads guilty to or is found guilty of a violation of
15 the provisions of section 18-8004(1) (b), Idaho Code, for the first time is
16 guilty of a misdemeanor and subject to:

17 (a) The provisions of subsection (1) (a), (b), (c) and (e) of this sec-
18 tion; and

19 (b) The provisions of section 49-335, Idaho Code.

20 (3) Any person who pleads guilty to or is found guilty of a violation of
21 the provisions of section 18-8004(1) (c), Idaho Code, for the first time is
22 guilty of a misdemeanor and is subject to:

23 (a) The provisions of subsection (1) (a), (b), (c) and (e) of this sec-
24 tion; and

25 (b) The provisions of section 49-335, Idaho Code.

26 (4) Any person who pleads guilty to or is found guilty of a violation of
27 the provisions of section 18-8004(1) (a), (b) or (c), Idaho Code, who previ-
28 ously has been found guilty of or has pled guilty to a violation of the provi-
29 sions of section 18-8004(1) (a), (b) or (c), Idaho Code, or any substantially
30 conforming foreign criminal violation within ten (10) years, notwithstand-
31 ing the form of the judgment(s) or withheld judgment(s), and except as pro-
32 vided in section 18-8004C, Idaho Code, is guilty of a misdemeanor; and, ex-
33 cept as provided in section 18-8004C, Idaho Code:

34 (a) Shall be sentenced to jail for a mandatory minimum period of not
35 less than ten (10) days, the first forty-eight (48) hours of which must
36 be consecutive, and five (5) days of which must be served in jail, as re-
37 quired by 23 U.S.C. 164, and may be sentenced to not more than one (1)
38 year, provided however, that in the discretion of the sentencing judge,
39 the judge may authorize the defendant to be assigned to a work detail
40 program within the custody of the county sheriff during the period of
41 incarceration;

42 (b) May be fined an amount not to exceed two thousand dollars (\$2,000);

43 (c) Shall be advised by the court in writing at the time of sentencing
44 of the penalties that will be imposed for subsequent violations of the
45 provisions of section 18-8004, Idaho Code, which advice shall be signed
46 by the defendant, and a copy retained by the court and another copy re-
47 tained by the prosecuting attorney;

48 (d) Shall surrender his driver's license or permit to the court;

49 (e) Shall have his driving privileges suspended by the court for an
50 additional mandatory minimum period of one (1) year after release from

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1 confinement, during which one (1) year period absolutely no driving
2 privileges of any kind may be granted; and

3 (f) Shall, while operating a motor vehicle, be required to drive only
4 a motor vehicle equipped with a functioning ignition interlock system,
5 as provided in section 18-8008, Idaho Code, following the one (1) year
6 mandatory license suspension period.

7 (5) If the person has pled guilty or was found guilty for the sec-
8 ond time within ten (10) years of a violation of the provisions of section
9 18-8004(1)(b) or (c), Idaho Code, then the provisions of section 49-335,
10 Idaho Code, shall apply.

11 (6) Except as provided in section 18-8004C, Idaho Code, any person who
12 pleads guilty to or is found guilty of a violation of the provisions of sec-
13 tion 18-8004(1)(a), (b) or (c), Idaho Code, who previously has been found
14 guilty of or has pled guilty to two (2) or more violations of the provisions
15 of section 18-8004(1)(a), (b) or (c), Idaho Code, or any substantially con-
16 forming foreign criminal violation, or any combination thereof, or who has
17 completed a diversion program for driving under the influence, whether or
18 not the person has pled guilty or been found guilty, or any substantially
19 conforming foreign program, and has pled guilty or been found guilty of one
20 (1) or more violations of the provisions of section 18-8004(1)(a), (b), or
21 (c), Idaho Code, or any substantially conforming foreign criminal violation
22 within ten (10) years, notwithstanding the form of the judgment(s) or with-
23 held judgment(s), shall be guilty of a felony and:

24 (a) Shall be sentenced to the custody of the state board of correction
25 for not to exceed ten (10) years; provided that notwithstanding the
26 provisions of section 19-2601, Idaho Code, should the court impose any
27 sentence other than incarceration in the state penitentiary, the de-
28 fendant shall be sentenced to the county jail for a mandatory minimum
29 period of not less than thirty (30) days, the first forty-eight (48)
30 hours of which must be consecutive, and ten (10) days of which must be
31 served in jail, as required by 23 U.S.C. 164; and further provided that
32 notwithstanding the provisions of section 18-111, Idaho Code, a convic-
33 tion under this section shall be deemed a felony;

34 (b) May be fined an amount not to exceed five thousand dollars (\$5,000);

35 (c) Shall surrender his driver's license or permit to the court;

36 (d) Shall have his driving privileges suspended by the court for a
37 mandatory minimum period of one (1) year after release from imprison-
38 ment, during which time he shall have absolutely no driving privileges
39 of any kind, and may have his driving privileges suspended by the court
40 for an additional period not to exceed four (4) years, during which
41 the defendant may request restricted driving privileges that the court
42 may allow if the defendant shows by a preponderance of the evidence
43 that driving privileges are necessary for his employment or for family
44 health needs; and

45 (e) Shall, while operating a motor vehicle, be required to drive only
46 a motor vehicle equipped with a functioning ignition interlock system,
47 as provided in section 18-8008, Idaho Code, following the mandatory one
48 (1) year license suspension period.

49 (7) Notwithstanding the provisions of subsections (4)(e) and (6)(d)
50 of this section, any person who is enrolled in and is a participant in good

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1 standing in a drug court or mental health court approved by the supreme
2 court drug court and mental health court coordinating committee under the
3 provisions of chapter 56, title 19, Idaho Code, or other similar problem
4 solving court utilizing community-based sentencing alternatives shall be
5 eligible for restricted noncommercial driving privileges for the purpose
6 of getting to and from work, school or an alcohol treatment program, which
7 may be granted by the presiding judge of the drug court or mental health
8 court or other similar problem solving court, provided that the offender
9 has served a period of absolute suspension of driving privileges of at least
10 forty-five (45) days, that a state-approved ignition interlock system is
11 installed, at his expense, on any motor vehicles operated by the offender
12 for a period to end one (1) year following the end of the suspension period
13 and that the offender has shown proof of financial responsibility as defined
14 and in the amounts specified in section 49-117, Idaho Code, provided that
15 the restricted noncommercial driving privileges may be continued if the of-
16 fender successfully completes the drug court, mental health court or other
17 similar problem solving court, and that the court may revoke such privileges
18 for failure to comply with the terms of probation or with the terms and condi-
19 tions of the drug court, mental health court or other similar problem solving
20 court program.

21 (8) For the purpose of computation of the enhancement period in subsec-
22 tions (4), (6) and (9) of this section, the time that elapses between the date
23 of commission of the offense and the date the defendant pleads guilty or is
24 found guilty for the pending offense shall be excluded. If the determination
25 of guilt against the defendant is reversed upon appeal, the time that elapsed
26 between the date of the commission of the offense and the date the defendant
27 pleads guilty or is found guilty following the appeal shall also be excluded.

28 (9) Notwithstanding the provisions of subsections (4) and (6) of this
29 section, any person who has pled guilty to or has been found guilty of a
30 felony violation of the provisions of section 18-8004, Idaho Code, a felony
31 violation of the provisions of section 18-8004C, Idaho Code, a violation
32 of the provisions of section 18-8006, Idaho Code, a violation of the provi-
33 sions of section 18-4006 3. (b), Idaho Code, notwithstanding the form of the
34 judgment(s) or withheld judgment(s) or any substantially conforming foreign
35 criminal felony violation, notwithstanding the form of the judgment(s) or
36 withheld judgment(s), and within fifteen (15) years pleads guilty to or is
37 found guilty of a further violation of the provisions of section 18-8004,
38 Idaho Code, shall be guilty of a felony and shall be sentenced pursuant to
39 subsection (6) of this section.

40 (10) For the purpose of subsections (4), (6) and (9) of this section and
41 the provisions of section 18-8004C, Idaho Code, a substantially conforming
42 foreign criminal violation exists when a person has pled guilty to or has
43 been found guilty of a violation of any federal law or law of another state,
44 or any valid county, city, or town ordinance of another state substantially
45 conforming to the provisions of section 18-8004, Idaho Code. The determina-
46 tion of whether a foreign criminal violation is substantially conforming is
47 a question of law to be determined by the court.

48 (11) Any person who pleads guilty to or is found guilty of a violation of
49 the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, shall
50 undergo, at his own expense (or at county expense through the procedures set

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1 forth in chapters 34 and 35, title 31, Idaho Code) and prior to the sentenc-
2 ing date, an alcohol evaluation by an alcohol evaluation facility approved
3 by the Idaho department of health and welfare; provided however, if the
4 defendant has no prior or pending charges with respect to the provisions
5 of section 18-8004, 18-8004C or 18-8006, Idaho Code, and the court has the
6 records and information required under subsection (12)(a), (b) and (c) of
7 this section or possesses information from other reliable sources relating
8 to the defendant's use or nonuse of alcohol or drugs which does not give
9 the court any reason to believe that the defendant regularly abuses alco-
10 hol or drugs and is in need of treatment, the court may, in its discretion,
11 waive the evaluation with respect to sentencing for a violation of section
12 18-8004 or 18-8004C(1), Idaho Code, and proceed to sentence the defendant.
13 The court may also, in its discretion, waive the requirement of an alcohol
14 evaluation with respect to a defendant's first violation of the provisions
15 of section 18-8004, 18-8004C or 18-8006, Idaho Code, and proceed to sentence
16 the defendant if the court has a presentence investigation report, sub-
17 stance abuse assessment, criminogenic risk assessment, or other assessment
18 which evaluates the defendant's degree of alcohol abuse and need for alco-
19 hol treatment conducted within twelve (12) months preceding the date of the
20 defendant's sentencing. In the event an alcohol evaluation indicates the
21 need for alcohol treatment, the evaluation shall contain a recommendation
22 by the evaluator as to the most appropriate treatment program, together with
23 the estimated cost thereof, and recommendations for other suitable alter-
24 native treatment programs, together with the estimated costs thereof. The
25 person shall request that a copy of the completed evaluation be forwarded
26 to the court. The court shall take the evaluation into consideration in
27 determining an appropriate sentence. If a copy of the completed evaluation
28 has not been provided to the court, the court may proceed to sentence the
29 defendant; however, in such event, it shall be presumed that alcohol treat-
30 ment is required unless the defendant makes a showing by a preponderance of
31 evidence that treatment is not required. If the defendant has not made a good
32 faith effort to provide the completed copy of the evaluation to the court,
33 the court may consider the failure of the defendant to provide the report
34 as an aggravating circumstance in determining an appropriate sentence. If
35 treatment is ordered, in no event shall the person or facility doing the
36 evaluation be the person or facility that provides the treatment unless this
37 requirement is waived by the sentencing court, with the exception of fed-
38 erally recognized Indian tribes or federal military installations, where
39 diagnosis and treatment are appropriate and available. Nothing herein con-
40 tained shall preclude the use of funds authorized pursuant to the provisions
41 of chapter 3, title 39, Idaho Code, for court-ordered alcohol treatment for
42 indigent defendants.

43 (12) At the time of sentencing, the court shall be provided with the fol-
44 lowing information:

45 (a) The results, if administered, of any evidentiary test for alcohol
46 and/or drugs;

47 (b) A computer or teletype or other acceptable copy of the person's
48 driving record;

49 (c) Information as to whether the defendant has pled guilty to or
50 been found guilty of a violation of the provisions of section 18-8004,

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1 18-8004C or 18-8006, Idaho Code, or a similar offense within the past
2 five (5) years, notwithstanding the form of the judgment(s) or withheld
3 judgment(s); and

4 (d) The alcohol evaluation required in subsection (11) of this section,
5 if any.

6 (13) A minor may be prosecuted for a violation of the provisions of sec-
7 tion 18-8004 or 18-8004C, Idaho Code, under chapter 5, title 20, Idaho Code.
8 In addition to any other penalty, if a minor pleads guilty to or is found
9 guilty of a violation of the provisions of section 18-8004(1)(a), (b) or
10 (c) or 18-8004C, Idaho Code, he shall have his driving privileges suspended
11 or denied for an additional one (1) year following the end of any period of
12 suspension or revocation existing at the time of the violation, or until
13 he reaches the age of twenty-one (21) years, whichever period is greater.
14 During the period of additional suspension or denial, absolutely no driving
15 privileges shall be allowed.

16 (14) In the event that the alcohol evaluation required in subsection
17 (11) of this section recommends alcohol treatment, the court shall order
18 the person to complete a treatment program in addition to any other sentence
19 which may be imposed, unless the court determines that alcohol treatment
20 would be inappropriate or undesirable, in which event the court shall enter
21 findings articulating the reasons for such determination on the record. The
22 court shall order the defendant to complete the preferred treatment program
23 set forth in the evaluation, or a comparable alternative, unless it appears
24 that the defendant cannot reasonably obtain adequate financial resources
25 for such treatment. In that event, the court may order the defendant to com-
26 plete a less costly alternative set forth in the evaluation, or a comparable
27 program. Such treatment shall, to the greatest extent possible, be at the
28 expense of the defendant. In the event that funding is provided for or on
29 behalf of the defendant by an entity of state government, restitution shall
30 be ordered to such governmental entity in accordance with the restitution
31 procedure for crime victims, as specified under chapter 53, title 19, Idaho
32 Code. Nothing contained herein shall be construed as requiring a court to
33 order that a governmental entity shall provide alcohol treatment at govern-
34 ment expense unless otherwise required by law.

35 (15) Any person who is disqualified, or whose driving privileges have
36 been suspended, revoked or canceled under the provisions of this chapter,
37 shall not be granted restricted driving privileges to operate a commercial
38 motor vehicle.

39 (16) As used in this section, "at his expense" includes the cost of ob-
40 taining, installing, using and maintaining an ignition interlock system.

41 SECTION 4. That Section 18-8008, Idaho Code, be, and the same is hereby
42 amended to read as follows:

43 18-8008. IGNITION INTERLOCK SYSTEMS.

44 (1)(a) If a person is convicted, is found guilty, pleads guilty or re-
45 ceives a withheld judgment for violating any of the provisions of this
46 chapter relating to driving under the influence and has had any or all of
47 a sentence or fine suspended for the violation, the court shall, unless
48 an exception is granted pursuant to section 18-8002(12), Idaho Code,

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1 impose the sanction provided for in this section in addition to any
2 other penalty or fine imposed pursuant to this chapter.

3 (b) The court shall order the person to have a state-approved ignition
4 interlock system installed, at his expense, on all motor vehicles op-
5 erated by him. A court may determine that an offender is eligible to
6 utilize available funds from the court interlock device and electronic
7 monitoring device fund, as outlined in section 18-8010, Idaho Code, for
8 the installation and operation of an ignition interlock device, based
9 on evidence of financial hardship.

10 (2) The calibration setting at which the ignition interlock system will
11 prevent the motor vehicle from being started shall be .025.

12 (3) As used in this chapter, the term "ignition interlock system" means
13 breath alcohol ignition interlock device, including a camera, certified by
14 the transportation department, designed to prevent a motor vehicle from be-
15 ing operated by a person who has consumed an alcoholic beverage.

16 (4) The transportation department shall by rule provide standards for
17 the certification, installation, repair and removal of the devices.

18 (5) The court shall notify the transportation department of its order
19 imposing a sanction pursuant to this section. The department shall attach
20 or imprint a notation on the driver's license or other document granting the
21 person restricted driving privileges of any person restricted under this
22 section that the person may operate only a motor vehicle equipped with an
23 ignition interlock system.

24 (6) When a court orders a person to install and use an ignition inter-
25 lock system pursuant to this section, the court shall order the person to pay
26 the cost for obtaining, installing, utilizing and maintaining the ignition
27 interlock system. All fees collected pursuant to this section shall be in
28 addition to any other fines or penalty provided by law and shall be deposited
29 in the court interlock device and electronic monitoring device fund created
30 in section 18-8010, Idaho Code.

31 SECTION 5. That Section 18-8010, Idaho Code, be, and the same is hereby
32 amended to read as follows:

33 18-8010. SURCHARGE ADDED TO ALL FINES. Every person who is convicted,
34 found guilty, pleads guilty or receives a withheld judgment for violating
35 the provisions of this chapter shall be required to pay an additional fif-
36 teen dollars (\$15.00) in addition to any other fine, penalty or costs the
37 court may assess. Moneys received pursuant to this section shall be remit-
38 ted to the county treasurer in the county where the person was adjudicated
39 for deposit in the "court interlock device and electronic monitoring device
40 fund," which is hereby created in each county. Moneys in this fund may be
41 utilized for the purchase of ignition interlock devices and electronic mon-
42 itoring devices required pursuant to sections 18-8002, 18-8002A, 18-8005,
43 18-8008 and 18-8008A, Idaho Code. Additionally, any moneys a court charges
44 a defendant for using an ignition interlock device or electronic monitoring
45 devices shall be placed in this fund. The court or a prosecuting attorney who
46 establishes a diversion program pursuant to section 19-3509, Idaho Code, may
47 also utilize moneys in this fund to pay for drug testing for an indigent di-
48 version participant or to assist an indigent defendant or indigent diversion

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1 participant to procure an ignition interlock device or electronic monitor-
2 ing devices. The court may also utilize moneys in this fund for alcohol or
3 drug abuse-related probation, treatment or prevention programs for adults
4 or juveniles.

5 SECTION 6. That Section 19-403, Idaho Code, be, and the same is hereby
6 amended to read as follows:

7 19-403. MISDEMEANORS. (1) Except as otherwise provided in subsections
8 ~~(2) and (3)~~ of this section, a prosecution for any misdemeanor must be com-
9 menced by the filing of the complaint or the finding of an indictment within
10 one (1) year after its commission.

11 (2) A prosecution for failure to report or failure to cause to be re-
12 ported the abuse, abandonment, or neglect of a child as provided for in sec-
13 tion 16-1605, Idaho Code, must be commenced by the filing of the complaint or
14 the finding of an indictment within four (4) years after its commission.

15 (3) A prosecution for misuse of funds as provided for in section
16 18-5702(1), Idaho Code, must be commenced by the filing of the complaint or
17 the finding of an indictment within five (5) years after its commission.

18 (4) A prosecution for a misdemeanor that was dismissed pursuant to sec-
19 tion 19-3509, Idaho Code, must be refiled no later than two (2) years after
20 its dismissal.

21 SECTION 7. That Section 19-3506, Idaho Code, be, and the same is hereby
22 amended to read as follows:

23 19-3506. EFFECT OF DISMISSAL AS BAR -- DISMISSAL FOR DIVERSION PARTIC-
24 IPANT. (1) An order for the dismissal of the action, as provided in this chap-
25 ter, is a bar to any other prosecution for the same offense, if it is a misde-
26 meanor, except as provided in subsection (2) of this section; but it is not a
27 bar if the offense is a felony.

28 (2) A prosecuting attorney may move for dismissal of a misdemeanor
29 action, and the court may order such dismissal, if the defendant agrees to
30 participate in a diversion program pursuant to section 19-3509, Idaho Code.
31 The action may be refiled for failure to complete the diversion program, and
32 speedy trial shall be calculated from the date of refileing.

33 SECTION 8. That Chapter 35, Title 19, Idaho Code, be, and the same is
34 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
35 ignated as Section 19-3507, Idaho Code, and to read as follows:

36 19-3507. DIVERSION PROGRAMS -- LEGISLATIVE INTENT. (1) For purposes
37 of this section and sections 19-3508 and 19-3509, Idaho Code, "diversion
38 program" means the use of local community resources, churches, substance
39 abuse counseling, informal probation, community service work, voluntary
40 restitution, or other available services or programs as an alternative to
41 adjudication of a criminal case in court.

42 (2) It is the intent of the legislature and the policy of the state of
43 Idaho that a diversion program should:

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(a) Provide an opportunity to incorporate statistics and empirical research into decision-making in the criminal justice system in a way that saves taxpayer dollars while also reducing recidivism and enhancing public safety;

(b) Provide individuals with the opportunity to rectify criminal conduct through early rehabilitative services or supervision, when such services or supervision can reasonably be expected to deter future criminal behavior by such individuals;

(c) Provide an alternative to the imposition of criminal sanctions when such an alternative can be expected to serve as sufficient sanction to deter criminal conduct; and

(d) Provide assistance to criminal court calendars in order to focus expenditure of criminal justice resources on matters involving serious criminality and severe correctional problems.

SECTION 9. That Chapter 35, Title 19, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 19-3508, Idaho Code, and to read as follows:

19-3508. ELIGIBILITY FOR DIVERSION PROGRAM. A person is eligible to participate in a diversion program if:

(1) The person has been charged with driving under the influence pursuant to section 18-8004 or 18-8004A, Idaho Code;

(2) No other person is alleged to have been physically injured as a result of the conduct underlying such charge; and

(3) The person charged has not been convicted of driving under the influence or a substantially conforming foreign criminal violation within the past ten (10) years and has not previously participated in a diversion program pursuant to section 19-3509, Idaho Code.

SECTION 10. That Chapter 35, Title 19, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 19-3509, Idaho Code, and to read as follows:

19-3509. DIVERSION PROGRAM REQUIREMENTS. (1) A prosecuting attorney may, at the prosecuting attorney's discretion, establish a diversion program and may refer a defendant eligible to participate in a diversion program pursuant to section 19-3508, Idaho Code, to such program within thirty (30) calendar days of a citation being issued or charges being filed against the defendant. Before entering an agreement to participate in the diversion program, a defendant may obtain advice from a defense attorney on the requirements and consequences of participating in the diversion program and must undergo a drug or alcohol evaluation, or both, if requested by the prosecuting attorney. The terms and conditions of the diversion program shall be set forth in a written agreement signed by the prosecuting attorney and the defendant as well as the defendant's attorney, if the defendant is represented by an attorney. If the defendant agrees to participate in the diversion program, then the prosecuting attorney shall move for dismissal of the action against the defendant pursuant to section 19-3506, Idaho Code.

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1 (a) A diversion program may be administered by the prosecuting attorney
2 or by the prosecuting attorney's designee. The diversion agreement
3 shall specify the person administering the program and shall set out the
4 requirements for successful completion of the program and the duration
5 of the diversion agreement. The duration of the period a person is re-
6 quired to participate in a diversion program under this section shall
7 be no shorter than twelve (12) months. A person participating in a di-
8 version program for an alcohol-related charge shall be required to in-
9 stall and maintain, at the participant's expense, an ignition inter-
10 lock system in each vehicle such person operates for the duration of the
11 program, as further provided in subsection (5) of this section. A per-
12 son participating in a diversion program for a charge unrelated to al-
13 cohoh shall be required to undergo drug testing at the person's expense
14 for at least twelve (12) months. If the person is indigent, the pros-
15 ecuting attorney may order the use of moneys from the interlock device
16 and electronic monitoring device fund created by section 18-8010, Idaho
17 Code, to assist the person in procuring an ignition interlock device or
18 to pay for drug testing. The participant in a diversion program must
19 also complete at least thirty-two (32) hours of sheriff inmate labor de-
20 tail or approved community service and at least twenty-four (24) hours
21 of drug and alcohol counseling, therapy, or education from an approved
22 provider.

23 (b) At the end of the diversion period, the prosecuting attorney shall
24 determine whether the participant complied with the requirements of the
25 diversion agreement. If the prosecuting attorney finds that the par-
26 ticipant failed to comply with the requirements of the diversion agree-
27 ment, then the prosecuting attorney may refile the case pursuant to sec-
28 tion 19-3506, Idaho Code.

29 (2) If a person participates in a diversion program pursuant to this
30 section, then any statement made by the person in diversion activities or
31 proceedings is inadmissible as substantive evidence of guilt during an adju-
32 dicative proceeding in the refiled case.

33 (3) The requirements for successful completion of a diversion program
34 may include, but are not limited to:

- 35 (a) Informal supervision with the probation department;
- 36 (b) Community service work;
- 37 (c) Inmate labor detail work;
- 38 (d) A community-based diversion program;
- 39 (e) Restitution to a victim;
- 40 (f) Alcohol monitoring and testing;
- 41 (g) Individual therapy and counseling;
- 42 (h) Group therapy and counseling; and
- 43 (i) Drug monitoring and testing.

44 (4) The administrator of a diversion program may require payment of
45 restitution and fees to cover the costs of the diversion program. Any moneys
46 collected shall be reasonably related to program costs. The administrator
47 shall assess a diversion fee of one hundred fifty-seven dollars and fifty
48 cents (\$157.50) to each diversion participant. If the participant is indig-
49 ent, the diversion fee may be waived. The diversion fee shall be paid to the
50 clerk of the district court and distributed as follows:

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1 (a) Seventeen dollars and fifty cents (\$17.50) to be distributed as
2 provided in section 31-3201A(2), Idaho Code;

3 (b) Ten dollars (\$10.00) to be distributed as provided in section
4 31-3201(3), Idaho Code;

5 (c) Ten dollars (\$10.00) to be distributed as provided in section
6 31-3201(5), Idaho Code;

7 (d) Fifteen dollars (\$15.00) to be distributed as provided in section
8 31-3201B, Idaho Code;

9 (e) Fifty dollars (\$50.00) to be distributed as provided in section
10 31-3201H, Idaho Code;

11 (f) Fifteen dollars (\$15.00) to be distributed as provided in section
12 31-3204, Idaho Code;

13 (g) Thirty-seven dollars (\$37.00) to be distributed as provided in sec-
14 tion 72-1025, Idaho Code; and

15 (h) Three dollars (\$3.00) to be distributed as provided in section
16 72-1105, Idaho Code.

17 (5) A participant in a diversion program whose driving privileges have
18 been suspended may be granted driving privileges by the administrator of
19 a diversion program, in which case the participant shall be issued a re-
20 stricted driving permit by the Idaho transportation department. Prior to
21 being granted restricted driving privileges, the participant must show to
22 the administrator proof of financial responsibility as defined and in the
23 amounts specified in section 49-117, Idaho Code. If participating in the
24 diversion program due to a charge involving alcohol, then the participant,
25 to receive a restricted driving permit, must have an ignition interlock
26 system as defined in section 18-8008, Idaho Code, installed in each vehi-
27 cle operated by the participant and must pay an ignition interlock fee of
28 fifteen dollars (\$15.00) to be deposited in the court interlock device and
29 electronic monitoring device fund created by section 18-8010, Idaho Code.
30 The ignition interlock system shall be removed once the participant suc-
31 cessfully completes diversion, provided that such removal shall not occur,
32 and the program shall not be considered successfully completed, until the
33 administrator of the diversion program receives a declaration from the par-
34 ticipant's ignition interlock vendor, on a form provided or approved by the
35 administrator, certifying that none of the following incidents occurred
36 while the system was installed in the vehicle:

37 (a) An attempt to start the vehicle with an alcohol concentration of
38 0.04 or more;

39 (b) Failure to take any random test;

40 (c) Failure to pass any random retest with an alcohol concentration of
41 0.025 or lower; or

42 (d) Failure of the participant to appear at the ignition interlock sys-
43 tem vendor's place of business when required for maintenance, repair,
44 calibration, monitoring, inspection, or replacement of the system.

45 (6) If criminal charges against the participant are refiled pursuant
46 to section 19-3506, Idaho Code, then an ignition interlock system installed
47 pursuant to this section shall be removed.

48 SECTION 11. That Section 20-617, Idaho Code, be, and the same is hereby
49 amended to read as follows:

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1 20-617. LABOR OF PRISONERS ON PUBLIC WORKS. Persons confined in the
2 county jail under a judgment of conviction, suspended sentence or withheld
3 judgment rendered in any criminal case, either under a judgment of imprison-
4 ment or a judgment for the payment of a fine and costs, or persons partici-
5 pating in a diversion program pursuant to section 19-3509, Idaho Code, may be
6 required to perform labor on federal, state or other governmental projects
7 or community service projects.

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## LEGISLATURE OF THE STATE OF IDAHO

⌘⌘⌘⌘  
~~~~~

Sixty-fifth Legislature

First Regular Session - 2019
~~~~~

IN THE \_\_\_\_\_

BILL NO. \_\_\_\_\_

BY \_\_\_\_\_

## AN ACT

RELATING TO DRIVER'S LICENSE SUSPENSIONS; AMENDING SECTION 18-8002A, IDAHO CODE, TO PROVIDE THAT UNDER SPECIFIED CONDITIONS, CERTAIN SUSPENSIONS SHALL BE VACATED AND DRIVING PRIVILEGES SHALL BE RESTORED AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-8002A, Idaho Code, be, and the same is hereby amended to read as follows:

18-8002A. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF DRUGS OR OTHER INTOXICATING SUBSTANCES -- SUSPENSION UPON FAILURE OF TESTS. (1) Definitions. As used in this section:

(a) "Actual physical control" means being in the driver's position of a motor vehicle with the motor running or with the vehicle moving.

(b) "Administrative hearing" means a hearing conducted by a hearing officer to determine whether a suspension imposed by the provisions of this section should be vacated or sustained.

(c) "Department" means the Idaho transportation department and, as the context requires, shall be construed to include any agent of the department designated by rule as hereinafter provided.

(d) "Director" means the director of the Idaho transportation department.

(e) "Evidentiary testing" means a procedure or test or series of procedures or tests utilized to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in a person, including additional testing authorized by subsection (6) of this section. An evidentiary test for alcohol concentration shall be based on a formula of grams of alcohol per one hundred (100) cubic centimeters of blood, per two hundred ten (210) liters of breath, or per sixty-seven (67) milliliters of urine. Analysis of blood, breath or urine for the purpose of determining alcohol concentration shall be performed by a laboratory operated by the Idaho state police or by a laboratory approved by the Idaho state police under the provisions of approval and certification standards to be set by the Idaho state police, or by any other method approved by the Idaho state police. Notwithstanding any other provision of law or rule of court, the results of any test for alcohol concentration and records relating to calibration, approval, certification or quality control performed by a laboratory operated and approved by the Idaho state police or by any other method approved by the Idaho state police shall be admissible in any proceeding in this state without the necessity of producing a witness to establish the reliability of the testing procedure for examination.





1 (f) "Hearing officer" means a person designated by the department to  
2 conduct administrative hearings. The hearing officer shall have au-  
3 thority to administer oaths, examine witnesses and take testimony,  
4 receive relevant evidence, issue subpoenas, regulate the course and  
5 conduct of the hearing and make a final ruling on the issues before him.

6 (g) "Hearing request" means a request for an administrative hearing on  
7 the suspension imposed by the provisions of this section.

8 (2) Information to be given. At the time of evidentiary testing for  
9 concentration of alcohol or for the presence of drugs or other intoxicating  
10 substances is requested, the person shall be informed that if the person re-  
11 fuses to submit to or fails to complete evidentiary testing, or if the per-  
12 son submits to and completes evidentiary testing and the test results indi-  
13 cate an alcohol concentration or the presence of drugs or other intoxicating  
14 substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code,  
15 the person shall be informed substantially as follows (but need not be in-  
16 formed verbatim):

17 If you refuse to submit to or if you fail to complete and pass eviden-  
18 tiary testing for alcohol or other intoxicating substances:

19 (a) The peace officer will issue a notice of suspension and you will be  
20 required to install, at your expense, a state-approved ignition inter-  
21 lock system on all motor vehicles you operate for a period to end one (1)  
22 year following the end of the suspension period;

23 (b) You have the right to request a hearing within seven (7) days of the  
24 notice of suspension of your driver's license to show cause why you re-  
25 fused to submit to or to complete and pass evidentiary testing and why  
26 your driver's license should not be suspended;

27 (c) If you refused or failed to complete evidentiary testing and do not  
28 request a hearing before the court or do not prevail at the hearing, your  
29 driver's license will be suspended and you will be required to install,  
30 at your expense, a state-approved ignition interlock system on all mo-  
31 tor vehicles you operate for a period to end one (1) year following the  
32 end of the suspension period. The suspension will be for one (1) year if  
33 this is your first refusal. The suspension will be for two (2) years if  
34 this is your second refusal within ten (10) years. You will not be able  
35 to obtain a temporary restricted license during that period;

36 (d) If you complete evidentiary testing and fail the testing and do not  
37 request a hearing before the department or do not prevail at the hear-  
38 ing, your driver's license will be suspended and you will be required to  
39 install, at your expense, a state approved ignition interlock system on  
40 all motor vehicles you operate for a period to end one (1) year following  
41 the end of the suspension period. This suspension will be for ninety  
42 (90) days if this is your first failure of evidentiary testing, but you  
43 may request restricted noncommercial vehicle driving privileges after  
44 the first thirty (30) days. The suspension will be for one (1) year  
45 if this is your second failure of evidentiary testing within five (5)  
46 years. You will not be able to obtain a temporary restricted license  
47 during that period;

48 (e) However, if you are admitted to a problem solving court program and  
49 have served at least forty-five (45) days of an absolute suspension of  
50 driving privileges, you may be eligible for a restricted permit for the



1 purpose of getting to and from work, school or an alcohol treatment pro-  
2 gram, but only if you install, at your expense, a state-approved igni-  
3 tion interlock system on all motor vehicles you operate; and

4 (f) After submitting to evidentiary testing, you may, when practica-  
5 ble, at your own expense, have additional tests made by a person of your  
6 own choosing.

7 (3) Rulemaking authority of the Idaho state police. The Idaho state po-  
8 lice may, pursuant to chapter 52, title 67, Idaho Code, prescribe by rule:

9 (a) What testing is required to complete evidentiary testing under this  
10 section; and

11 (b) What calibration or checking of testing equipment must be performed  
12 to comply with the department's requirements. Any rules of the Idaho  
13 state police shall be in accordance with the following: a test for alco-  
14 hol concentration in breath as defined in section 18-8004, Idaho Code,  
15 and subsection (1)(e) of this section will be valid for the purposes of  
16 this section if the breath alcohol testing instrument was approved for  
17 testing by the Idaho state police in accordance with section 18-8004,  
18 Idaho Code, at any time within ninety (90) days before the evidentiary  
19 testing. A test for alcohol concentration in blood or urine as defined  
20 in section 18-8004, Idaho Code, that is reported by the Idaho state po-  
21 lice or by any laboratory approved by the Idaho state police to perform  
22 this test will be valid for the purposes of this section.

23 (4) Suspension and ignition interlock system.

24 (a) Upon receipt of the sworn statement of a peace officer that there  
25 existed legal cause to believe a person had been driving or was in actual  
26 physical control of a motor vehicle while under the influence of alco-  
27 hol, drugs or other intoxicating substances and that the person submit-  
28 ted to a test and the test results indicated an alcohol concentration or  
29 the presence of drugs or other intoxicating substances in violation of  
30 section 18-8004, 18-8004C or 18-8006, Idaho Code, the department shall  
31 suspend the person's driver's license, driver's permit, driving privi-  
32 leges or nonresident driving privileges:

33 (i) For a period of ninety (90) days for a first failure of ev-  
34 identiary testing under the provisions of this section. The  
35 first thirty (30) days of the suspension shall be absolute and the  
36 person shall have absolutely no driving privileges of any kind.  
37 Restricted noncommercial vehicle driving privileges applicable  
38 during the remaining sixty (60) days of the suspension may be re-  
39 quested as provided in subsection (9) of this section.

40 (ii) For a period of one (1) year for a second and any subsequent  
41 failure of evidentiary testing under the provisions of this sec-  
42 tion within the immediately preceding five (5) years. No driving  
43 privileges of any kind shall be granted during the suspension im-  
44 posed pursuant to this subsection.

45 The department shall also direct the installation, at the offender's  
46 expense, of a state-approved ignition interlock system meeting the re-  
47 quirements of section 18-8008, Idaho Code, on all motor vehicles oper-  
48 ated by the offender for a period to end one (1) year following the end of  
49 the suspension period.



1 The person may request an administrative hearing on the suspension as  
2 provided in subsection (7) of this section. Any right to contest the  
3 suspension shall be waived if a hearing is not requested as therein pro-  
4 vided.

5 (b) The suspension shall become effective thirty (30) days after ser-  
6 vice upon the person of the notice of suspension and notice of the re-  
7 quirement to install, at his expense, a state-approved ignition inter-  
8 lock system for a period to end one (1) year following the end of the sus-  
9 pension period. The notice shall be in a form provided by the department  
10 and shall state:

11 (i) The reason and statutory grounds for the suspension and the  
12 requirement to install the ignition interlock system;

13 (ii) The effective date of the suspension and the requirement to  
14 install the ignition interlock system;

15 (iii) The suspension periods to which the person may be subject as  
16 provided in paragraph (a) of this subsection;

17 (iv) The procedures for obtaining restricted noncommercial vehi-  
18 cle driving privileges;

19 (v) The rights of the person to request an administrative hear-  
20 ing on the suspension and that, if an administrative hearing is not  
21 requested within seven (7) days of service of the notice of suspen-  
22 sion and notice of the requirement to install the ignition inter-  
23 lock system, the right to contest the suspension shall be waived;

24 (vi) The procedures for obtaining an administrative hearing on  
25 the suspension;

26 (vii) The right to judicial review of the hearing officer's deci-  
27 sion on the suspension and the procedures for seeking such review.

28 (c) Notwithstanding the provisions of paragraph(a)(i) and (ii) of  
29 this subsection, a person who is enrolled in and is a participant in  
30 good standing in a drug court or mental health court approved by the  
31 supreme court drug court and mental health court coordinating commit-  
32 tee under the provisions of chapter 56, title 19, Idaho Code, or other  
33 similar problem solving court utilizing community-based sentencing  
34 alternatives shall be eligible for restricted noncommercial driving  
35 privileges for the purpose of getting to and from work, school or an al-  
36 cohol treatment program, which may be granted by the presiding judge of  
37 the drug court or mental health court or other similar problem solving  
38 court, provided that the offender has served a period of absolute sus-  
39 pension of driving privileges of at least forty-five (45) days, that a  
40 state-approved ignition interlock system is installed, at his expense,  
41 on all motor vehicles operated by him for a period to end one (1) year  
42 following the end of the suspension period and that the offender has  
43 shown proof of financial responsibility as defined and in the amounts  
44 specified in section 49-117, Idaho Code, provided that the restricted  
45 noncommercial driving privileges may be continued if the offender  
46 successfully completes the drug court, mental health court or other  
47 similar problem solving court, and that the court may revoke such privi-  
48 leges for failure to comply with the terms of probation or with the terms  
49 and conditions of the drug court, mental health court or other similar  
50 problem solving court program.



(5) Service of suspension and ignition interlock system by peace officer or the department. If the driver submits to evidentiary testing after the information in subsection (2) of this section has been provided and the results of the test indicate an alcohol concentration or the presence of drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code:

(a) The peace officer shall, acting on behalf of the department, serve the person with a notice of suspension and notice of the requirement to install, at his expense, a state-approved ignition interlock system for a period to end one (1) year following the end of the suspension period in the form and containing the information required under subsection (4) of this section. The department may serve the person with a notice of suspension and the requirement to install the ignition interlock system if the peace officer failed to do so or failed to include the date of service as provided in subsection (4) (b) of this section.

(b) Within five (5) business days following service of a notice of suspension and notice of the requirement to install the ignition interlock system, the peace officer shall forward to the department a copy of the completed notice of suspension and notice of the requirement to install the ignition interlock system form upon which the date of service upon the driver shall be clearly indicated, a certified copy or duplicate original of the results of all tests for alcohol concentration, as shown by analysis of breath administered at the direction of the peace officer, and a sworn statement of the officer, which may incorporate any arrest or incident reports relevant to the arrest and evidentiary testing setting forth:

- (i) The identity of the person;
- (ii) Stating the officer's legal cause to stop the person;
- (iii) Stating the officer's legal cause to believe that the person had been driving or was in actual physical control of a motor vehicle while under the influence of alcohol, drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code;
- (iv) That the person was advised of the consequences of taking and failing the evidentiary test as provided in subsection (2) of this section;
- (v) That the person was lawfully arrested;
- (vi) That the person was tested for alcohol concentration, drugs or other intoxicating substances as provided in this chapter, and that the results of the test indicated an alcohol concentration or the presence of drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code.

If an evidentiary test of blood or urine was administered rather than a breath test, the peace officer or the department shall serve the notice of suspension once the results are received. The sworn statement required in this subsection shall be made on forms in accordance with rules adopted by the department.

(c) The department may serve the person with a notice of suspension if the peace officer failed to issue the notice of suspension or failed to





1 include the date of service as provided in subsection (4)(b) of this  
2 section.

3 (6) Additional tests. After submitting to evidentiary testing at the  
4 request of the peace officer, the person may, when practicable, at his own  
5 expense, have additional tests for alcohol concentration or for the presence  
6 of drugs or other intoxicating substances made by a person of his own choos-  
7 ing. The person's failure or inability to obtain additional tests shall not  
8 preclude admission of the results of evidentiary tests administered at the  
9 direction of the peace officer unless additional testing was denied by the  
10 peace officer.

11 (7) Administrative hearing on suspension. A person who has been served  
12 with a notice of suspension and notice of the requirement to install the ig-  
13 nition interlock system after submitting to an evidentiary test may request  
14 an administrative hearing on the suspension before a hearing officer desig-  
15 nated by the department. The hearing may be held only on the suspension and  
16 not on the requirement to install an ignition interlock system. The request  
17 for hearing shall be in writing and must be received by the department within  
18 seven (7) calendar days of the date of service upon the person of the notice  
19 of suspension and notice of the requirement to install the ignition inter-  
20 lock system and shall include what issue or issues shall be raised at the  
21 hearing. The date on which the hearing request was received shall be noted  
22 on the face of the request.

23 If a hearing is requested, the hearing shall be held within twenty (20)  
24 days of the date the hearing request was received by the department unless  
25 this period is, for good cause shown, extended by the hearing officer for a  
26 ten (10) day period. Such extension shall not operate as a stay of the sus-  
27 pension, notwithstanding an extension of the hearing date beyond such thirty  
28 (30) day period. Written notice of the date and time of the hearing shall  
29 be sent to the party requesting the hearing at least seven (7) days prior to  
30 the scheduled hearing date. The department may conduct all hearings by tele-  
31 phone if each participant in the hearing has an opportunity to participate in  
32 the entire proceeding while it is taking place.

33 The hearing shall be recorded. The sworn statement of the arresting of-  
34 ficer, and the copy of the notice of suspension and the notice of the require-  
35 ment to install the ignition interlock system issued by the officer shall  
36 be admissible at the hearing without further evidentiary foundation. The  
37 results of any tests for alcohol concentration or the presence of drugs or  
38 other intoxicating substances by analysis of blood, urine or breath adminis-  
39 tered at the direction of the peace officer and the records relating to cal-  
40 ibration, certification, approval or quality control pertaining to equip-  
41 ment utilized to perform the tests shall be admissible as provided in section  
42 18-8004(4), Idaho Code. The arresting officer shall not be required to par-  
43 ticipate unless directed to do so by a subpoena issued by the hearing offi-  
44 cer.

45 The burden of proof shall be on the person requesting the hearing. The  
46 hearing officer shall not vacate the suspension unless he finds, by a prepon-  
47 derance of the evidence, that:

48 (a) The peace officer did not have legal cause to stop the person; or

49 (b) The officer did not have legal cause to believe the person had been  
50 driving or was in actual physical control of a vehicle while under the



1 influence of alcohol, drugs or other intoxicating substances in viola-  
2 tion of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho  
3 Code; or

4 (c) The test results did not show an alcohol concentration or the pres-  
5 ence of drugs or other intoxicating substances in violation of section  
6 18-8004, 18-8004C or 18-8006, Idaho Code; or

7 (d) The tests for alcohol concentration, drugs or other intoxicating  
8 substances administered at the direction of the peace officer were not  
9 conducted in accordance with the requirements of section 18-8004(4),  
10 Idaho Code, or the testing equipment was not functioning properly when  
11 the test was administered; or

12 (e) The person was not informed of the consequences of submitting to ev-  
13 identitary testing as required in subsection (2) of this section.

14 If the hearing officer finds that the person has not met his burden of proof,  
15 he shall sustain the suspension. The hearing officer shall make findings of  
16 fact and conclusions of law and shall enter an order vacating or sustaining  
17 the suspension. The findings of fact, conclusions of law and order entered  
18 by the hearing officer shall be considered a final order pursuant to the pro-  
19 visions of chapter 52, title 67, Idaho Code, except that motions for recon-  
20 sideration of such order shall be allowed and new evidence can be submitted.

21 The facts as found by the hearing officer shall be independent of the de-  
22 termination of the same or similar facts in the adjudication of any criminal  
23 charges arising out of the same occurrence. The disposition of those crim-  
24 inal charges shall not affect the suspension and the requirement to install  
25 the ignition interlock system required to be imposed under the provisions of  
26 this section. If a license is suspended under this section and the person is  
27 also convicted on criminal charges arising out of the same occurrence for a  
28 violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho  
29 Code, both the suspension under this section and the suspension imposed pur-  
30 suant to the provisions of section 18-8005 or 18-8006, Idaho Code, shall be  
31 imposed, but the periods of suspension shall run concurrently, with the to-  
32 tal period of suspension not to exceed the longer of the applicable suspen-  
33 sion periods, unless the court ordering the suspension in the criminal case  
34 orders to the contrary. If a license is suspended under this section and the  
35 criminal charges arising out of the same occurrence for a violation of the  
36 provisions of section 18-8004, 18-8004C, or 18-8006, Idaho Code, are vacated  
37 or dismissed, then both the suspension under this section and the suspen-  
38 sion imposed pursuant to the provisions of section 18-8005 or 18-8006, Idaho  
39 Code, shall also be vacated. The defendant's driving privileges shall be re-  
40 stored on the effective date the criminal charges are vacated or dismissed.

41 (8) Judicial review. A party aggrieved by the decision of the hearing  
42 officer may seek judicial review of the decision in the manner provided for  
43 judicial review of final agency action provided in chapter 52, title 67,  
44 Idaho Code. Upon motion of the person required to install an ignition in-  
45 terlock device pursuant to subsection (4) (a) of this section, a court in its  
46 discretion may relieve the person from the installation of the device where  
47 the court finds it clear and convincing that the person will not present a  
48 danger to the public or that there are exceptional or mitigating circum-  
49 stances demonstrating that installation of the device is unnecessary or  
50 unwarranted. Financial hardship, standing alone, is not an exceptional or



1 mitigating circumstance. A court may determine that an offender is eligible  
2 to utilize available funds from the court interlock device and electronic  
3 monitoring device fund, as outlined in section 18-8010, Idaho Code, for the  
4 installation and operation of an ignition interlock device, based on evi-  
5 dence of financial hardship.

6 (9) Restricted noncommercial vehicle driving privileges. A person  
7 served with a notice of suspension for ninety (90) days pursuant to this  
8 section may apply to the department for restricted noncommercial vehicle  
9 driving privileges, to become effective after the thirty (30) day absolute  
10 suspension has been completed. The request may be made at any time after ser-  
11 vice of the notice of suspension. Restricted noncommercial vehicle driving  
12 privileges will be issued for the person to travel to and from work and for  
13 work purposes not involving operation of a commercial vehicle, to attend an  
14 alternative high school, work on a GED, for postsecondary education, or to  
15 meet the medical needs of the person or his family if the person is eligible  
16 for restricted noncommercial vehicle driving privileges. Any person whose  
17 driving privileges are suspended under the provisions of this chapter may be  
18 granted privileges to drive a noncommercial vehicle but shall not be granted  
19 privileges to operate a commercial motor vehicle.

20 (10) As used in this section, "at his expense," "at your expense" and "at  
21 the offender's expense" include the cost of obtaining, installing, using and  
22 maintaining an ignition interlock system.

23 (11) Rules. The department may adopt rules under the provisions of  
24 chapter 52, title 67, Idaho Code, deemed necessary to implement the provi-  
25 sions of this section.



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LEGISLATURE OF THE STATE OF IDAHO  
Sixty-fifth Legislature First Regular Session - 2019  
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This bill draft contains confidential and privileged information exempt from disclosure under Section 74-109(1), Idaho Code. If you have received this message by mistake, please notify us immediately by replying to this message or telephoning the Legislative Services Office at (208) 334-2475.

AN ACT

RELATING TO CRIMINAL PROCEDURE; AMENDING CHAPTER 19, TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-1910, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE CERTAIN REQUIREMENTS AND RESTRICTIONS FOR PRETRIAL RISK ASSESSMENT ALGORITHMS, AND TO PROVIDE THAT A COURT MAY CONSIDER CERTAIN FACTORS; AND PROVIDING SEVERABILITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 19, Title 19, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 19-1910, Idaho Code, and to read as follows:

19-1910. PRETRIAL RISK ASSESSMENT ALGORITHMS. (1) As used in this section:

(a) "Free of bias" means that an algorithm has been formally tested and shown to predict successfully at the same rate for those in protected classes as those not in protected classes and that difference in the rate of overestimating risk for persons in any protected class is not statistically significant from the rate of overestimating risk for persons in other protected classes or persons who do not belong to a protected class.

(b) "Pretrial risk assessment algorithm" means a computer program or application that creates and scores particular factors that have been shown to correlate with failing to appear in court or committing a new crime while out on bail, in order to then classify a person into a particular category of risk or to make recommendations as to bail and conditions of release based on such risk, whether made on an individualized basis or based on a grid or schedule.

(c) "Protected class" means race, color, religion, sex, or national origin.

(2) Pretrial risk assessment algorithms shall not be used in the state of Idaho by the state or any political subdivision of the state, nor shall any public funds be expended for their implementation, until first shown to be free of bias against any protected class. Nothing contained in this subsection shall prohibit the state or a political subdivision of the state from operating a pretrial risk assessment algorithm for the purposes of validating its bias and effectiveness, provided the risk scores generated are not made available to the court for sentencing until the pretrial risk assessment algorithm has been shown to meet the requirements of this section.

(3) The state or any political subdivision using a pretrial risk assessment algorithm must first have formally validated such assessment, independent of the programmer or vendor providing the pretrial risk assessment algorithm, and must post a validation report on its website and make it oth-

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1 erwise open to public inspection. The pretrial risk assessment algorithm  
2 must be validated as free of bias no less frequently than every two (2) years.

3 (4) All pretrial risk assessment algorithms shall be transparent, and  
4 all documents, records, and information used to build or validate the risk  
5 assessment shall be open to public inspection, auditing, and testing. No  
6 builder or user of a pretrial risk assessment algorithm may assert trade se-  
7 cret or other protections in order to quash discovery in a criminal matter by  
8 a party to a criminal case.

9 (5) Nothing in this section shall be construed as prohibiting the court  
10 from considering previous convictions, employment history, ties to the com-  
11 munity, and other factors required by law in setting bail provided that the  
12 factors are considered in a manner that is neutral in their application irre-  
13 spective of membership in a protected class.

14 SECTION 2. SEVERABILITY. The provisions of this act are hereby declared  
15 to be severable and if any provision of this act or the application of such  
16 provision to any person or circumstance is declared invalid for any reason,  
17 such declaration shall not affect the validity of the remaining portions of  
18 this act.



AGENDA  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:30 P.M.**  
**Room EW42**  
**Thursday, February 21, 2019**

| SUBJECT               | DESCRIPTION                              | PRESENTER                               |
|-----------------------|------------------------------------------|-----------------------------------------|
| <a href="#">H 98</a>  | Marriage Age                             | Representative Wintrow                  |
| <a href="#">H 170</a> | Child Protection / Notification / Waiver | Representative Scott                    |
| <a href="#">H 138</a> | Forcible Entry / Unlawful Detainer       | Paul Smith, Idaho Apartment Association |

***If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

|                      |              |               |
|----------------------|--------------|---------------|
| Chairman Dayley      | Rep Ehardt   | Rep Troy      |
| Vice Chairman Chaney | Rep Scott    | Rep Young     |
| Rep Kerby            | Rep Goesling | Rep Gannon    |
| Rep Amador           | Rep Hartgen  | Rep McCrostie |
| Rep Zito             | Rep Marshall | Rep Wintrow   |
| Rep Zollinger        | Rep Ricks    | Rep Davis     |

COMMITTEE SECRETARY

Wendy Carver-Herbert  
Room: EW56  
Phone: 332-1127  
email: [hjud@house.idaho.gov](mailto:hjud@house.idaho.gov)

MINUTES

## HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

**DATE:** Thursday, February 21, 2019

**TIME:** 1:30 P.M.

**PLACE:** Room EW42

**MEMBERS:** Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis

**ABSENT/  
EXCUSED:** None

**GUESTS:** The sign-in sheet will be retained with the minutes in the committee secretary's office until the end of the session. Following the session, the sign-in sheet will be filed with the minutes in the Legislative Services Library.

**Chairman Dayley** called the meeting to order at 1:35 p.m.

**MOTION:** **Rep. McCrostie** made a motion to approve the minutes of the February 7, 2019 and February 11, 2019 meetings. **Motion carried by voice vote.**

**Chairman Dayley** stated the Committee will adjourn at 5:00 p.m. Any remaining bills or testimony will be carried over to Monday, February 25, 2019.

**H 98:** **Rep. Wintrow** presented **H 98**. This bill creates a minimum marriage age of 16 years old. Currently there is no marriage age minimum in Idaho. Under this legislation 16- and 17-year-olds can get married, but both parties must consent. It would also require parent or guardian permission and court approval. This bill will also align the law with Idaho's statutory rape laws and a person age 16 or 17 years may marry a person no more than three years older. She stated the stats for young marriages are going down, but last year 75 girls and 15 boys under the age of 18 were married.

**Rep. Wintrow** yielded her time to **Annie Hightower**, Executive Director of Policy, Idaho Coalition Against Sexual and Domestic Violence. Ms. Hightower stated young women are typically at higher risk of domestic violence. There is some question about whether minors can even file for protection orders or divorce on their own, which puts them at greater risk. Child marriage has lifelong consequences including higher rates of poverty and diminished mental and physical health. In answer to a question from the Committee, Rep. Wintrow stated the statute defines a bride as a girl and groom as a boy and does not currently address same sex marriages.

**Barry Wood**, Senior District Judge, Idaho Supreme Court, yielded to questions from the Committee. He explained the court currently only gets involved if one of the parties is under the age of 16. It requires the court petition, medical opinion on soundness to fulfill the marriage contract, parental consent and a hearing. These cases are extraordinary rare. If one, or both parties is age 16 or 17, they seek a license through the county recorder, but it must include the consent of the parent or guardian. This legislation would require 16- and 17-year-olds to go through the court process that currently applies to minors under the age of 16 years. He said the process doesn't normally take long, assuming the medical opinion is readily available.

**Jennifer Zielinski**, Idaho Anti-Trafficking Coalition, **Abby Barzie**, **Sage Griffin**, **Lisa Hunter** and **Sam Anderson** spoke in support of **H 98**. Their comments included: Underage marriage in Idaho may help human traffickers avoid prosecution due to current laws; child marriages can have slave-like characteristics of human trafficking; this is a human rights issue; child marriages result in higher rates of divorce and domestic violence; the bill protects the child's rights; kids should be allowed to be kids and child marriage robs children of their childhood; girls are forced into situations where they are too young to understand the gravity of the decision.

In answer to questions from the Committee, **Rep. Wintrow** explained her initial interest in this issue was the result of her work on the human trafficking subcommittee, but her focus has evolved to looking at underage marriage and statutory rape as a child protection issue. She said this law would not be retroactive if it were passed into law.

**MOTION:** **Rep. Troy** made a motion to send **H 98** to the floor with a **DO PASS** recommendation.

Speaking to the motion, **Reps. Ehardt and Zollinger** said they will support the motion, but they have more questions for the sponsor, and reserve the right to change their vote on the floor.

**VOTE ON MOTION:** **Chairman Dayley** called for a vote on the motion. **Motion carried by voice vote.** **Rep. Wintrow** will sponsor the bill on the floor.

**H 170:** **Rep. Scott** presented **H 170**. This bill would add a new section to Title 16, Chapter 16, which would be entitled "Notification of Rights". Under this proposed law, the Department of Health and Welfare would be required to provide a written form that states a parent's rights in a child protection investigation. She stated that each of the rights described on the form are protected under the fourth, fifth, sixth and fourteenth amendments. She reviewed the federal Child Abuse Prevention and Treatment Act, which states that all children under age 18 suspected of being abused must be reported. She explained that about 11 percent of Idaho homes are turned into the Department of Health and Welfare for investigation, but 83 percent are unfounded. She stated this notice would help parents who may be under stressed conditions to understand their rights. **Rep. Scott** yielded her time to **Scott Herndon**, District 1, who reiterated that of the 10,000 homes visited annually by Child Protective Services (CPS), 80 percent are found to be without cause. He said the purpose of the bill was not to remove any of the responsibility from CPS. It was written to prevent them from maximally invading the parent/child relationship and violating a parent's Constitutional rights.

**Mr. Herndon and Rep. Scott** answered questions from the Committee. Their responses included that while the fifth and sixth amendments refer to criminal cases, additional amendments apply. **Mr. Herndon** explained there is U.S. Supreme Court case law that states the right to remain silent applies in all civil, criminal, administrative, judicial, investigatory or adjudicatory situations. The right to remain silent is in the fourth amendment as it relates to being detained for questioning, or being seized. **Rep. Scott** stated this legislation is being brought forward based on many examples of case law where the Ninth Circuit Court has reinforced parental relationships. **Mr. Herndon** stated CPS social workers do not have the power to arrest or cite those being investigated, but under Federal law they are empowered to move a case forward. He explained law enforcement is not involved in all cases, therefore, it makes the most sense for CPS to handle the notification of rights because they are involved with cases from beginning to end. **Rep. Scott** reiterated that unlike Miranda Rights, no one will read the rights. They will only be given to the parent or guardian. She explained that if a CPS worker is not invited into a home,

they can still go to court and get a warrant to conduct the investigation. This bill does not require the notice be provided in any language other than English.

**Rep. Goesling** suggested that the identification of the person presenting the document along with a CPS phone number should be included on the form.

**Robert Jones, Misty Karlfeldt, Dustin Ingram, Don Martin and Christin Jones** spoke in support of **H 170**. Each shared their personal stories, or stories of those who were unable to testify in person. They stated: it is good for parents to understand their rights; this furthers child safety; and child protective services workers do not have proper training.

**MOTION:**

**Rep. Chaney** made a motion to send **H 170** to the floor with a **DO PASS** recommendation.

**Reps. Chaney, Kerby, Zito, Goesling, Ehardt and Young** spoke in support of the motion. Their comments included: it is good for people to know what their rights are; 8,000 cases each year are unfounded; investigations can be intrusive and can greatly impact the parent/child relationship; the process itself can be considered abusive; and a great deal of responsibility is in the hands of CPS workers, but that shouldn't be granted at the expense of denying Constitutional rights.

**Rep. Davis** stated she would support sending the bill out of Committee, but reserved the right to change her vote on the floor. She said she supports government transparency, but she is also concerned about child safety.

**Reps. Wintrow, Amador and Gannon** spoke in opposition to the motion. They stated: the 8,000 cases may actually be unsubstantiated, rather than unfounded; it is difficult to make a decision when CPS is unable to respond to questions from the Committee; this may be a personnel and training issue versus a systemic problem; this could put children in abusive situations at greater risk; this could increase the number of law enforcement calls by CPS; the Child Abuse Prevention and Treatment Act is intended to protect the most vulnerable population in society and this bill appears to go to greater lengths to protect parental rights over the rights of children.

**VOTE ON MOTION:**

**Chairman Dayley** called for a vote on the motion to send **H 170** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Reps. Wintrow, Amador and Gannon** requested to be recorded as voting **NAY**. **Rep. Scott** will sponsor the bill on the floor.

**Chairman Dayley** called a recess of the Committee at 3:46 p.m.

**Chairman Dayley** reconvened the meeting at 3:54 p.m.

**H 138:**

**Paul Smith**, Executive Director of the Idaho Apartment Association presented **H 138**. Mr. Smith explained the process for creating the bill started 18 months ago and involved several tenant's groups, organizations for the disabled, legislators and landlord's groups. This has been an inclusive process and as a result, they have met the concerns of many, including many of the ACLU's issues. He said regardless of the number of people who testify in opposition, the bill is a compromise. He explained there are new rights for tenants. For example, if a landlord is not fixing things, a tenant can break their lease, or fix it and deduct the cost of the repair from their rent. Evictions can be lengthy and costly. Some people believe it is unfair from a tenant's perspective; however, it can be a hardship on landlords and surrounding neighbors. Surrounding states have similar lengths of time for the eviction process.

In answer to questions from the Committee, **Mr. Smith** said this legislation would apply to both residential and commercial leases. He explained this bill standardizes the eviction process and provides a reasonable time frame for resolution. He said no eviction happens in Idaho without a judge signing off on it, and he has faith the courts can sort it out. As a whole, it is good public policy. He was unable to answer how a party can request a jury trial in 12 days, and stated it would be a question better addressed by an attorney or the courts.

**Noel Gill**, Northwest Real Estate Capital Corp.; **Ian Bott**, Disability Council; **Shane Facer**; **Nick O'Bryant**; **Allison Brace**, Intermountain Fair Housing Council; **Josh Scholer**, Idaho Asset Building Network; **Christine Pisani**, Idaho Council on Disabilities; **Gail Heilman**, District 19 Landlord; **Patricia Young**, retired Magistrate Judge; and **Julianne Donnelly Tzul**, International Rescue Committee, spoke **in opposition** to **H 138**. Their comments included: the bill will have a negative impact on families, low income and refugees; it will have an increasing impact on homelessness because there is not enough affordable housing for the demand; **H 138** reduces time to prepare evidence from 3 weeks to 12 days; the expedited time frame will not allow tenants time to understand their rights, obtain legal council and evidence to support their cases; landlords do not always provide the reason a lease was violated when providing notice, nor does the notice itemize the charges or fines, making it difficult for tenants to prepare their cases. As a retired judge, Ms. Young stated she is concerned about the court's ability to hear these cases in a timely manner, especially in commercial cases. Ms. Donnelly Tzul said this bill facilitates the actions of the few who are unscrupulous and will use a lease violation as a way to discriminate.

**Rep. Ricks** involved Rule 38.

**Leon Scott** and **Ben Widmyer** spoke **in support** of **H 138**. Mr. Scott stated he has rarely had a tenant problem that he hasn't been able to resolve through the HAP program. Eviction is always the last resort, but it is costly. This bill updates how to handle abandoned property, which is good for landlords. Mr. Widmyer said he agrees with the issues of affordable housing, but this bill does not solve the problem, or make it worse. Evictions are for people who do not follow the rules and they often can be a nuisance to other neighbors. This bill adds protections for tenants by requiring landlords to put deposits in trust. Domestic violence victims also have additional protections. In answer to questions from the Committee, Mr. Widmyer said this bill is clear and concise and puts everyone on the same page, following the same rules. He stated he is not able to recover damages very often.

**ADJOURN:**

There being no further business to come before the Committee, the meeting adjourned at 5:10 p.m.

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Representative Dayley  
Chair

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Wendy Carver-Herbert  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:30 P.M.**  
**Room EW42**  
**Monday, February 25, 2019**

| SUBJECT               | DESCRIPTION                                     | PRESENTER                                       |
|-----------------------|-------------------------------------------------|-------------------------------------------------|
| <a href="#">H 138</a> | Forcible Entry / Unlawful Detainer              | Paul Smith, Idaho Apartment Association         |
| <a href="#">H 70</a>  | Sexual Battery / Minors                         | Representative Wintrow                          |
| <a href="#">H 139</a> | Foreign Defamation Judgements                   | Representative Ehardt                           |
| <a href="#">H 99</a>  | Drug Trafficking / Mandatory Minimum Sentencing | Representative Rubel & Representative Zollinger |

***If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

|                      |              |               |
|----------------------|--------------|---------------|
| Chairman Dayley      | Rep Ehardt   | Rep Troy      |
| Vice Chairman Chaney | Rep Scott    | Rep Young     |
| Rep Kerby            | Rep Goesling | Rep Gannon    |
| Rep Amador           | Rep Hartgen  | Rep McCrostie |
| Rep Zito             | Rep Marshall | Rep Wintrow   |
| Rep Zollinger        | Rep Ricks    | Rep Davis     |

COMMITTEE SECRETARY

Wendy Carver-Herbert  
Room: EW56  
Phone: 332-1127  
email: [hjud@house.idaho.gov](mailto:hjud@house.idaho.gov)

MINUTES

## HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

**DATE:** Monday, February 25, 2019

**TIME:** 1:30 P.M.

**PLACE:** Room EW42

**MEMBERS:** Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis

**ABSENT/  
EXCUSED:** Rep. Kirby

**GUESTS:** The sign-in sheet will be retained with the minutes in the committee secretary's office until the end of the session. Following the end of the session, the sign-in sheet will be filed with the minutes in the Legislative Services Library.

**Chairman Dayley** called the meeting to order at 1:33 p.m.

**Chairman Dayley** reviewed committee and testifying protocol. Testimonies will be limited to three minutes to include everyone who wants to testify.

**H 138:** **Chairman Dayley** returned **H 138** to the committee for consideration, which was held for time certain from the meeting of February 21, 2019.

**Alniah Selene** expressed concern with **H 138**, as finding affordable housing is very difficult, and it took sixty-six days to find an apartment that was accessible and affordable. Shortening the time frame may take away abilities and freedoms of those with disabilities.

**Josh Tayler**, attorney, Concordia University Housing Clinic School of Law, testified **in opposition** to the bill. Boise has a hearing every Tuesday and Thursday with tenants and landlords. Many tenants are unaware of their rights and are not represented. Most of Idaho's over 100 thousand tenants are fine, though the industry has changed, leaving a property management company, who makes money from charges to tenants. Late fees happen too fast, with no due process.

In response to committee questions, **Mr. Tayler** explained people aren't aware they have a late fee, and when the next rent payment is made, the late fee is paid first, and the rest is applied to rent. Another late fee is added, and then tenants are evicted for not paying rent. This fee goes to the property management company. Sometimes landlords, rather than property management companies, will work with the tenant and let them pay the late fee in payments. The majority of law suits are from a property management company rather than the owner. Tenants get three days to pay the rent, on day four they are evicted. Many tenants are on fixed incomes, and late fees are difficult to pay.

Some committee members expressed concern that while portions of the bill may be good, as a whole the bill would not be good for tenants. Affordable housing will make it more difficult to move someone out of a unit. The three day eviction process has been in place for a long time. This legislation may mean fewer landlords put up houses for rent. The committee expressed concern about increasing rent. When there is supply and demand, rent prices go up. If someone hasn't paid rent, the judges in Ada County will ask that person to move on. From this bill there is no change in the process to evict someone who hasn't paid their rent. Commercial leases are included in **H 138**. A renter cannot hold a landlord hostage on rent for doing repairs. Rent cannot be withheld without good cause. A tenant will risk eviction by making a repair and a deduction from rent. A tenant has the ability to terminate the lease if repairs are not made. Tenants would need to choose between getting repairs or getting damages. Landlords can ask for both at the same time.

**Robin Crisler** ACLU, spoke **in opposition** to the bill with concerns for multi-national citizens, and used to dis-empower and dis-enfranchise people of color.

**Anthony Yeason**, Boise Renters United, and **Jim Baugh**, Executive Director, Disability Rights of Idaho, spoke **in opposition** to the bill. Mr. Baugh expressed concern with the notice, due process, and short time frame. This bill allows for forcible removal by the constable, and Idaho has no constables, and gives the courts the ability to decide guilt of an unlawful detainer. Expedited eviction is only related to rent and drugs, and applies only to the plaintiff, not to the defendant.

**Summer Hazen**, Senior Community Manager, Greystar, and **Len Galus**, Regional Manager, Greystar, Global Property Management Company, oversee a portfolio of six properties, and spoke **in support** of this bill. It will help residents and the landlords. It is difficult for the landlords to take care of people who don't want to follow policies and this bill will protect both parties. In response to committee questions, Mr. Galus has only one or two cases per month go to court.

**Annie Hightower**, Idaho Coalition for Against Sexual and Domestic Violence, spoke **in opposition** to this bill because survivors of sexual and domestic violence are often seen as problem tenants, and do not have the capability to respond to an expedited eviction. Violation of their provisions would have an adverse effect on these survivors.

**Justice Jim Jones** was called by the Committee to answer questions in response to his written testimony. (Attachment) Justice Jones, said expedited eviction with damages gives one a right to a jury trial, and this legislation doesn't give time to get their case together. Damage claims are often inaccurate and an expedited process may deprive the right to a jury trial.

**Kathy Griesmyer**, American Civil Liberties Union (ACLU), spoke **in opposition** to the bill, and differed to **Richard Eppink**, Legal Director, ACLU. Mr. Eppink said this bill sits on the precipice of unconstitutionality, and believes it will be struck down in court due to problems with due process.

**MOTION:**

**Rep. Zollinger** made a motion to send **H 138** to the floor with a **DO PASS** recommendation.

Speaking to the motion, **Rep. Gannon** said the bill needs a lot of work and is not necessary.

**SUBSTITUTE MOTION:**

**Rep. Wintrow** made a substitute motion to **HOLD H 138** in committee.

**Rep. Chaney** spoke **in support** of the substitute motion.



**Rep. Zollinger** is sympathetic to both sides, expressing that it is not the governments role to interpret these contracts, and spoke **in support** of the original motion.

**ROLL CALL  
VOTE ON  
SUBSTITUTE  
MOTION:**

Roll call vote was requested. **Motion failed by a vote of 7 AYE, 10 NAY, 1 Absent/Excused.** Voting in favor of the motion: **Reps. Chaney, Goesling, Marshall, Gannon, Nash, Wintrow, Davis.** Voting in opposition to the motion: **Reps. Amador, Zito, Zollinger, Ehardt, Scott, Hartgen, Ricks, Troy, Young, Dayley.** Rep. Kerby was Absent/Excused.

**ROLL CALL  
VOTE ON  
ORIGINAL  
MOTION:**

A roll call vote was requested on the original motion to send **H 138** to the floor with a **DO PASS** recommendation . **Motion carried by a vote of 11 AYE, 6 NAY, 1 Absent/Excused.** Voting in favor of the motion: **Reps. Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Ricks, Troy, Young, Dayley.** Voting in opposition to the motion: **Reps. Chaney, Marshall, Gannon, Nash, Wintrow, Davis.** Rep. Kerby was Absent/Excused. Rep. Troy will sponsor the bill on the floor.

**H 70:**

**Rep. Wintrow** presented **H 70**, an amendment seeking to add Sexual Battery of a Minor Child Sixteen or Seventeen Years of Age to Idaho Code, which lists all felony crimes that disqualify a convicted felon from owning a firearm. Other similar felony crimes such as Sexual Abuse of a Child under Sixteen, Sexual Exploitation of a Child, and Lewd Conduct with a Minor Child under Sixteen, are all listed as prohibitions to possession. It appears that Sexual Battery of a Minor Child Sixteen or Seventeen Years of Age was inadvertently left off the list of qualifying felony crimes in previous amendments that included other sexual battery felonies. Legislative research does not reveal any reason that previous sessions of the legislature would have failed to add it to the law. Given its serious nature, which includes registration on the Sex Offender Registry, and should be included among other similar codes to prevent a person with this felony conviction from possessing a firearm in Idaho.

**Terry Dearden**, Sheriff, Ada County Sheriff's Office, said this bill will add this to the provision of felon and would be included in those felons to not be able to get a concealed weapons permit. It was an oversight, and asked that it be corrected.

**MOTION:**

**Rep. Goesling** made a motion to send **H 70** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Reps. Zollinger, Scott, and Zito** requested to be recorded as voting **NAY**. **Rep. Wintrow** will sponsor the bill on the floor.

**H 139:**

**Rep. Ehardt** presented **H 139**, legislation protecting authors, journalists and speakers in Idaho from being dragged into foreign courts over frivolous libel charges in jurisdictions that do not respect, value and protect freedom of speech, and the press, as in the United States. It will provide protection from the practice of "Libel Tourism," in which plaintiffs choose to file lawsuits in jurisdictions not providing the same protections of free speech as the U.S. Constitution.

Speaking **in support** of this bill, **Steve Shirer**, attorney, said this law will greatly decrease cases in foreign courts. In response to committee questions, Mr. Shirer explained how a foreign judgment can be filed with the state of Idaho. No judgements have been brought before an Idaho citizen yet.

**Rep. Ehardt** said sometimes policy is not clearly given, and this will make clear what Idaho wants done in this case. Idaho laws and values should be enforced in the courts.

**MOTION:**

**Rep. Chaney** made a motion to send **H 139** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Marshall** requested to be recorded as voting **NAY**. **Rep. Ehardt** will sponsor the bill on the floor.

**H 99:**

**Rep. Zollinger** presented **H 99**, legislation changing current code pertaining to mandatory minimum sentencing provisions for trafficking in controlled substances. It provides for judicial discretion sentencing in instances where the prescribed minimum sentence would result in a manifest injustice, and where the prescribed minimum sentence is not deemed necessary for the protection of the public.

Speaking in support of **H 99**, **Soni Starr, Kathleen Klar, Karen Lansing, David Hi, John Lynn, Kay Hass, Phil Tate, and Mary Ann Kojis**, each shared a personal story about their sons who have become addicted to drugs, and received a prison sentence under the mandatory minimum sentencing.

**Karen Lansing** spoke in support of **H 99**. Ms. Lansing served on the Idaho Court of Appeals, and reviewed sentences of those who appealed, and the comments of the judges, and believes a judge is often prevented from doing what he/ she feels is the right thing because of the mandatory minimum sentencing.

**Elisa Massoth**, attorney, spoke in support of **H 99**, said the high-end trafficker would still receive the same sentencing under this bill. Research has concluded that stiffer prison sentences do not detour behavior.

**Mary Ann Kojis** started Starry Link, a program which takes books to inmates so they can record stories for their children, supports rehabilitation rather than mandatory minimum sentencing.

**Michael Kane**, Idaho Sheriff's Association, spoke in opposition to the bill. As a former drug and murder prosecutor, he heard many cases of addiction, organized crime, money over human life, to enrich themselves and harm others. Mandatory minimum laws are for traffickers, not addicts. The court can commute the sentence if needed, and put the person in county jail for a period of time. Pardon and parole can also commute sentences, if deemed necessary. It would be better to move the line and increase the amounts of drugs.

**MOTION:**

**Rep. Nash** made a motion to send **H 99** to the floor with a **DO PASS** recommendation.

**MOTION:**

**Rep. Scott** made a motion to call for the previous question.

**Rep. Ricks** said he would like to hear more testimony and have time to debate this issue.

**ADJOURN:**

The meeting adjourned at 5:24 p.m.

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Representative Dayley  
Chair

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Jayne Feik  
Secretary

## Statement of Jim Jones regarding House Bill 138

February 20, 2019

House Judiciary, Rules and Administration Committee

Hon. Thomas Dayley, Chairman

Chairman Dayley and honorable members of the Committee

I have serious concerns about the provisions of HB 138 that would: (1) expand the expedited eviction procedure to include cases where “any amount” is claimed to be due by the landlord; (2) allow the determination of damages in an expedited proceeding; (3) deny jury trial for damage issues; and (4) interfere with court scheduling by adding more expedited cases to court calendars.

Before explaining my concerns, it should be made clear that I am not speaking on behalf of the court system. I did not take senior status as a judge because I wanted to be able to speak freely on this type of issue without implicating the courts. These are strictly my own views.

The expedited eviction procedure in Idaho Code section 6-310 was enacted into law in 1974, the year after I started my law practice in Jerome. It was designed to quickly remove a tenant who was not paying rent. That is why the expedited procedure was exclusively limited to actions to recover possession of rented property. If a person was not paying rent, it would be rather apparent one way or the other. There was no need for each side to do a lot of legwork preparing to prove or disprove that single issue. Because of the limited nature of the inquiry at the trial, it was not a problem for either side to prepare within the 12-day trial setting prescribed by section 6-310(2). During my practice in Jerome in the nineteen-seventies, I represented people on both sides of the expedited procedure and it was fair to both.

From 1974 to the present, section 6-311E has prevented landlords from using the expedited procedure where damages are also being pursued. If a landlord seeks damages, that issue must be litigated in a regular civil action where both parties can seek information from the other side and have adequate time to prepare their case for trial. Damage claims are much more fact intensive than a simple eviction, do not entail the urgency of gaining possession of property, and are not subject to being fairly determined in a rushed case. There is no reason to give this particular type of damage suit priority over all other types of cases.

HB 138 repeals section 6-311E and, for the first time, allows a landlord to seek recovery of damages in the short-fuse expedited procedure, including rent claimed to be owing,

“any other amount” the landlord claims to be due, “waste” (damage to the premises) and even treble damages. This gives the landlord a powerful upper hand to obtain a recovery because he or she can line up evidence and witnesses prior to filing suit and be fully prepared for trial. The tenant would essentially be caught by surprise, having just days to try to gather witnesses and evidence.

The summons and complaint served on the defendant need not specifically identify the damages sought at the expedited hearing and the short time frame does not allow for the defendant to obtain that information from the landlord through the normal discovery rules. This poses a serious due process problem for the defendant.

The ability to use the tenant’s failure to pay “any other amount due” as a ground for initiating a quick eviction and claim for damages lends itself to abusive practices. If the lease includes provisions requiring the tenant to pay various charges--water, sewer, lawn mowing, light bulb replacement, appliance repair, ect.--failure to pay even a nominal amount could provide grounds for seeking eviction and damages, even if the validity of the charge may be in dispute. Either pay up or risk eviction.

In my recent work on landlord-tenant issues, I have learned it is not uncommon for some of the Boise area property managers to take advantage of tenants of modest means. I represented one family that was wrongfully sued for over \$4,000 in alleged damages to the property they rented. The property had been in shabby condition when these folks moved in and was actually cleaner when they left. The landlord wanted them to pay for a complete painting job, new carpet, a new refrigerator, new blinds, and numerous other amounts claimed to be due under the lease or as “waste” to the property.

This family had not been evicted, but was pursued in an action for damages that went through regular court processes. That allowed the collection of an attorney fee in the amount of \$1,000. The family could not afford an attorney and did not know how to defend the suit so a default judgement of more than \$5,000 was entered against them. The family’s credit was damaged and their sole wage-earner’s paychecks were garnished to apply to the judgment.

We were able to get the default judgment overturned but I learned this type of abusive practice occurs more than one would think. It would certainly proliferate under the provisions on HB 138. Any landlord or property manager in his or her right mind would use this expedited eviction/collection procedure, rather than the existing procedures where the parties are on more equal legal footing.

Most landlords are reasonable and willing to work with good tenants. On the other hand, most tenants want to do the right thing. There are certainly tenants who do not and there needs to be a procedure for quickly removing them from a property. Idaho Code section 6-310, as currently written, has worked well in that regard for 45 years. It would be fair to add a provision allowing an award of attorney fees to the prevailing party in an expedited eviction. However, allowing the recovery of a range of monetary damages in a flash trial where the defending party has little chance to prepare will result in substantial injustice.

The courts have generally asserted the right to establish their own procedures, such as controlling the exchange of information in discovery proceedings and the scheduling of court proceedings. If there is a rush to use the new landlord-friendly, fast-track eviction/collection procedure, as would be expected, it could upset court scheduling of all cases. There is absolutely no valid reason to give landlord-tenant damage cases priority over all other civil cases. I am no longer on the Court, but if I were, I would be concerned with the potential disruption of court calendars. If a sizable number of cases have to be tried on a crash 12-day basis, it would certainly cause chaos.

Also troubling is the denial of a jury trial on the damage issues. Article I, section 7 of the Idaho Constitution states, "The right of trial by jury shall remain inviolate." Where a landlord is only seeking recovery of possession of real property for failure of the tenant to pay the agreed rent, the right to jury trial might not apply. This type of case, which courts have regarded as "sounding in equity," has not historically involved a jury trial. However, Idaho courts have upheld the right to trial by jury where damage issues are to be determined. The courts have regarded these as "actions at law," which have historically entailed a right to jury trial. The denial of the right to jury trial on the damage issues in a combined eviction/damages suit could be violative of our Constitution.

On the positive side, Section 14 of HB 138, which gives crime victims the right to have new locks installed and to terminate a lease early in certain instances, is a good idea. It is worthy of support, but the remainder of the bill is problematic.

**AMENDED AGENDA #1**  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:30 pm or Upon Adjournment**  
**Room EW42**  
**Wednesday, February 27, 2019**

| SUBJECT              | DESCRIPTION                                     | PRESENTER                                             |
|----------------------|-------------------------------------------------|-------------------------------------------------------|
| <a href="#">H 99</a> | Drug Trafficking / Mandatory Minimum Sentencing | Representative Rubel<br>& Representative<br>Zollinger |

***If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

|                      |              |
|----------------------|--------------|
| Chairman Dayley      | Rep Ehardt   |
| Vice Chairman Chaney | Rep Scott    |
| Rep Kerby            | Rep Goesling |
| Rep Amador           | Rep Hartgen  |
| Rep Zito             | Rep Marshall |
| Rep Zollinger        | Rep Ricks    |

|                     |
|---------------------|
| Rep Troy            |
| Rep Young           |
| Rep Gannon          |
| Rep McCrostie(Nash) |
| Rep Wintrow         |
| Rep Davis           |

COMMITTEE SECRETARY

Wendy Carver-Herbert  
Room: EW56  
Phone: 332-1127  
email: [hjud@house.idaho.gov](mailto:hjud@house.idaho.gov)

MINUTES

## HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

**DATE:** Wednesday, February 27, 2019

**TIME:** 1:30 pm or Upon Adjournment

**PLACE:** Room EW42

**MEMBERS:** Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy (Maurin), Young, Gannon, McCrostie (Nash), Wintrow, Davis

**ABSENT/  
EXCUSED:** None

**GUESTS:** The sign-in sheet will be retained with the minutes in the committee secretary's office until the end of the session. Following the end of the session, the sign-in sheet will be filed with the minutes in Legislative Services Library.

**MOTION:** **Chairman Dayley** called the meeting to order at 1:30 p.m.

**Rep. Marshall** made a motion to approve the minutes of February 15th, 2019.  
**Motion carried by voice vote.**

**Chairman Dayley** reviewed Committee and testimony procedures.

**H 99:** **Chairman Dayley** returned **H 99** to the Committee for consideration, which was held for time certain from the meeting of February 25, 2019.

**Rep. Rubel** presented **H 99**. Rep. Rubel stated that 83% of those convicted of drug trafficking in Idaho do not have a violent criminal record and 42% have no prior criminal record. Most are first-time traffickers and have no previous trafficking charges. The annual fiscal cost for incarcerating these individuals is about \$11.4M. If only eight of those individuals were given probation instead of serving a mandatory minimum sentence, the savings to the state would be approximately \$1M. She pointed out the extreme discrepancy in the sentences of other egregious crimes versus drug trafficking. She covered the two rationales for when mandatory minimum sentences were originally put into law. In 1994 a constitutional change removed discretionary sentencing by judges due to the mandatory minimum clause. The constitutional change removed the ability to use discretionary sentencing, if the person cooperated with prosecutors and investigations. In 2018, a bill passed with a super majority out of the House, but only had an informational hearing in the Senate. Rep. Rubel discussed other significant developments, including the Justice Reinvestment Commission voted unanimously to reform mandatory minimum sentences. At the Federal level, "The First Act" scaled back mandatory minimum sentences for drug offenses.

**Rep. Rubel** explained the current law is a power shift from judges to prosecutors in this category of offenses. The prosecutors have the discretion in determining what charges they bring and how they plea bargain. She discussed the balance between state and federal laws. The federal laws have a safety valve so state laws are far more stringent. So, prosecutors often prefer to bring cases to the state courts because of the more stringent mandatory sentences. This in turn burdens our state funds, courts and prisons. Reform presents opportunity to shift costs away from state courts and prisons. Judges in favor of reform explain there is a manifest injustice as there are cases of first time and non-violent offenders where they are given no options in sentencing.

**Rep. Rubel** discussed opposition due to the belief of inconsistency in sentencing.

She stated consistency in sentencing is being used for other egregious crimes and the same consistency can be applied to drug trafficking.

**Rep. Rubel** stated the original rationale behind mandatory minimum sentencing was for deterrence. Deterrence is only one of the objectives in our criminal justice system. Locking up first-time drug offenders can turn them into long-term criminal offenders after prison terms rather giving them a chance at rehabilitation. She said national data shows that the certainty of getting caught is more effective than the severity of the punishment. Judges should be trusted to have discretion in sentencing like they do for other offenses.

In answer to questions from the Committee, **Rep. Rubel** stated there is no acceptable percentage to wrongly incarcerating someone in the hopes it will have a deterrent effect on others. With regard to abolishing mandatory minimum sentencing on all crimes, she said there is a moral distinction and difference between possession of drugs for personal use and the other egregious crimes that require mandatory minimums such as murder and repeated sexual abuse of a child.

**Judith Herman** school counselor, West Ada School District; **Scott McKay**, criminal defense attorney; and **Lynette Gillery**, testified in support of H 99. Some shared their personal stories of how current law has impacted their lives. Their comments also included: drug addiction is a national health crisis; addicts should be given a chance with education and rehabilitation instead of mandatory sentences; the goal of the law is to target large scale drug dealers, but this actually targets drug addicts.

**Joe Andreoli**, President, Fraternal Order of Police; **Kip Paperello**, narcotics detective, Ada County; **Chris Orvis**, Legislative Chairman, Fraternal Order of Police; **Scott Bandy**, Idaho Prosecuting Attorney's Association, spoke in opposition to H 99. Officer Andreoli urged the Committee to make decisions based on fact and not emotion. He shared details on the amount of drugs in possession of some defendants that were discussed in previous testimony. He stated the amounts were excessively beyond what is needed for personal use. Their comments also included: the public and judges don't always have the full story; drug cartels are set up in the states surrounding Idaho, but they are telling their people to go around Idaho because of the drug trafficking laws; drug crimes are tied to other crimes such as property crimes and violence; the weights and monetary value of drugs in possession that trigger the mandatory minimums are above what a normal addict would use; mandatory minimums are a deterrent; the drug problem solving courts are working for the low level offenders and addicts; there is little talk of the lives that are impacted by the people who are selling drugs.

**Chairman Dayley** called a recess at 3:25 p.m.

**Chairman Dayley** reconvened the meeting at 3:38 p.m.

**Fred Birnbaum**, Idaho Freedom Foundation, spoke in support of H 99. He stated this legislation does not do as much as victims hope, nor is it as dangerous as the opponents state. He said it changes the word "must" to "shall". It allows a judge's discretion in extraordinary circumstances. It is a modest and reasonable bill.

**Kieran Donahue**, Sheriff, Canyon County; and **Scott Fisher**, testified in opposition to H 99. Sheriff Donahue stated Idaho is a high intensity drug trafficking area. The state receives Federal funds for projects to address drug trafficking across the state as a result of this. There are addicts who are dealers, and dealers who are not addicts. They are businesses people. Mr. Fisher shared his personal story of loss due to drugs.

**MOTION:**

**Rep. Zito** made a motion to send H 99 to the floor with a **DO PASS** recommendation.



**Reps. Hartgen and Goesling** spoke in **opposition** to the motion. Their comments included: crime rates are up in Idaho and the Legislature can change the minimums by raising the amounts of drugs that can be held in possession; drug charges are frequently dealt down; the drug and mental health problem solving courts give addicts an option of diversion or jail, and many of them succeed; jail can be a deterrent.

In answer to questions from the Committee, **Rep. Rubel** stated this bill does not decriminalize anything. This won't open the floodgate to lighter sentences for egregious drug dealers or cartels.

**Reps. Wintrow and Ehardt** spoke in **support** of the motion. Their comments included: this will not open the flood gates, but it will open a small window in cases where manifest injustice has taken place; this provides recourse; when the Founding Fathers created the justice system, one of their key points was, "may a guilty man go free, rather than an innocent man go to prison".

**ROLL CALL  
VOTE ON  
MOTION:**

**Chairman Dayley** called for a roll call vote on the motion. **Motion carried by a vote of 13 AYE, 4 NAY, 1 Absent/Excused.** Voting in favor of the motion: **Reps. Kerby, Amador, Zito, Zollinger, Ehardt, Marshall, Troy, Young, Gannon, McCrostie, Wintrow, Davis, Dayley.** Voting in opposition to the motion: **Reps. Chaney, Goesling, Hartgen, Ricks.** **Rep. Scott was Absent/Excused.** **Reps. Rubel and Zollinger** will sponsor the bill on the floor.

**ADJOURN:**

There being no further business to come before the Committee, the meeting adjourned at 4:03 p.m.

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Representative Dayley  
Chair

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Wendy Carver-Herbert  
Secretary

**AMENDED AGENDA #1**  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:30 pm OR Upon Adjournment**  
**Room EW42**  
**Friday, March 01, 2019**

| <b>SUBJECT</b>               | <b>DESCRIPTION</b>                                         | <b>PRESENTER</b>        |
|------------------------------|------------------------------------------------------------|-------------------------|
| <a href="#"><u>HR 3</u></a>  | Rule 41 / Pairing on Roll Call Votes                       | Representative Moyle    |
| <a href="#"><u>HR 4</u></a>  | Rule 79 / Veto Procedure After Governor's Action           | Representative Moyle    |
| <a href="#"><u>H 209</u></a> | Peace Officers / Arrests Without Warrant / School Violence | Representative Goesling |

***If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

|                      |              |                     |
|----------------------|--------------|---------------------|
| Chairman Dayley      | Rep Ehardt   | Rep Troy(Maurin)    |
| Vice Chairman Chaney | Rep Scott    | Rep Young           |
| Rep Kerby            | Rep Goesling | Rep Gannon          |
| Rep Amador           | Rep Hartgen  | Rep McCrostie(Nash) |
| Rep Zito             | Rep Marshall | Rep Wintrow         |
| Rep Zollinger        | Rep Ricks    | Rep Davis           |

COMMITTEE SECRETARY

Wendy Carver-Herbert  
Room: EW56  
Phone: 332-1127  
email: [hjud@house.idaho.gov](mailto:hjud@house.idaho.gov)

MINUTES

## HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

**DATE:** Friday, March 01, 2019

**TIME:** 1:30 pm OR Upon Adjournment

**PLACE:** Room EW42

**MEMBERS:** Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy (Maurin), Young, Gannon, McCrostie (Nash), Wintrow, Davis

**ABSENT/  
EXCUSED:** Representatives Scott, Wintrow

**GUESTS:** Quinn Perry, ISBA; Mike Munger, Office of School Safety  
**Chairman Dayley** called the meeting to order at 12:41 p.m.

**H 209:** **Rep. Goesling** presented **H 209**, which is a rewrite bill for **H 115**. Rep. Goesling explained the changes, which included removing the word "arrested" from line 23 at the Committee's request. He explained a technical correction was made to line 23, which changed 19-901 to 19-902. He briefly explained this bill came about as a result of a threat made in the Moscow School district and law enforcement was unable to hold or arrest the suspect because they did not witness the action. This caused great stress on the children, parents and school district. With the addition of I.C. § 18-3302I to this section of code, an officer may make an arrest with or without warrant when someone threatens school violence.

**MOTION:** **Rep. Chaney** made a motion to send **H 209** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Zito** requested to be recorded as voting **NAY**. **Rep. Goesling** will sponsor the bill on the floor.

**HR 3:** **Rep. Moyle** presented **HR 3**, which is a rewrite of the House rule pertaining to pairing on roll call votes. This rule makes it clear and concise about how pairing works. It is easier to read and understand. In answer to a question from the Committee, Rep. Moyle stated the pair is broken if a member of the pair asks or answers a question, or debates.

**MOTION:** **Rep. McCrostie** made a motion to send **HR 3** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Moyle** will sponsor the bill on the floor.

**HR 4:** **Rep. Moyle** presented **HR 4**. This is a new rule to clarify the process for handling a Governor's veto. The process is laid out in the Constitution, but it isn't clearly provided for in House rules. The new rule states there are five actions that can be taken in addition to a vote on the question, "Shall House Bill \_\_\_\_ pass, the Governor's veto notwithstanding?" Rep. Moyle stated the options are to adjourn, recess, lay it on table, postpone to a time certain, or hold at the desk. He explained this will now be in the rules, so everyone plays by the same rules. In answer to questions from the Committee, Rep. Moyle explained the vote is the action to be taken unless one of the five listed motions are made. Additionally, the rule states, "House bill" because a vetoed bill goes back to the house of origin for a possible override vote. He also stated a vetoed bill cannot return to a Committee because it is not in the Constitution, and it states the question put forth by the Chair is used instead of Speaker because the rule was modeled after the Senate rule.

**MOTION:** **Rep. Marshall** made a motion to send **HR 4** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Moyle** will sponsor the bill on the floor.

**ADJOURN:** There being no further business to come before the Committee, the meeting adjourned at 1:06 p.m.

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Representative Dayley  
Chair

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Wendy Carver-Herbert  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
1:30 pm OR Upon Adjournment  
Room EW42  
Tuesday, March 05, 2019

| SUBJECT                  | DESCRIPTION                        | PRESENTER                                                                              |
|--------------------------|------------------------------------|----------------------------------------------------------------------------------------|
| <a href="#">S 1018aa</a> | Prisoners, Punishment              | Jason Slade Spillman,<br>Administrative Office<br>of the Courts/Idaho<br>Supreme Court |
| <a href="#">S 1019</a>   | Order of Service                   | Jason Slade Spillman                                                                   |
| <a href="#">S 1021</a>   | Bail, Cash Deposit                 | Jason Slade Spillman                                                                   |
| <a href="#">S 1022</a>   | Evasion of Jury Service, Repeal    | Jason Slade Spillman                                                                   |
| <a href="#">S 1042</a>   | Magistrates, Institute Requirement | Jason Slade Spillman                                                                   |
| <a href="#">S 1043</a>   | Judges, Fourth Judicial District   | Jason Slade Spillman                                                                   |

***If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

|                      |              |                  |
|----------------------|--------------|------------------|
| Chairman Dayley      | Rep Ehardt   | Rep Troy(Maurin) |
| Vice Chairman Chaney | Rep Scott    | Rep Young        |
| Rep Kerby            | Rep Goesling | Rep Gannon       |
| Rep Amador           | Rep Hartgen  | Rep McCrostie    |
| Rep Zito             | Rep Marshall | Rep Wintrow      |
| Rep Zollinger        | Rep Ricks    | Rep Davis        |

COMMITTEE SECRETARY

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MINUTES

## HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

**DATE:** Tuesday, March 05, 2019

**TIME:** 1:30 pm OR Upon Adjournment

**PLACE:** Room EW42

**MEMBERS:** Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy (Maurin), Young, Gannon, McCrostie, Wintrow, Davis

**ABSENT/  
EXCUSED:** Representative McCrostie

**GUESTS:** Barry Wood, Jason Spillman, AOC/ISC; Colin Nash, Senate intern

**Chairman Dayley** called the meeting to order at 1:31 p.m.

**S 1018aa:** **Jason Slade Spillman**, Legal Counsel, Administrative Office of the Courts and Idaho Supreme Court presented **S 1018aa**. He stated this bill and three of the following bills are part of the court's annual clean up that requires the courts to correct defects or omissions in the law. The original bill was a one word change in §18-2509, which outlined the penalty for aiding a person from escaping from a state institution. The prior version of the bill related that penalty to the entire section of code, which include several escape crimes including a felony escape, so it created the argument that this misdemeanor penalty applied to these other parts of the section. Mr. Spillman explained that instead of referencing the entire act, the bill references the correct section of code (§18-2508). **S 1018aa** sets forth the language of §18-2508. However, the Senate thought some of the language in §18-2508 was outdated and offensive. At the direction of the Senate, Mr. Spillman provided revised language and some of that was adopted as referenced in **S 1018aa**. The penalty provision, that was originally in §18-2509, was inserted into §18-2508. Therefore, the bill also repeals the penalty section of §18-2509. The Senate recommended the bill include a general misdemeanor penalty.

**Rep. Marshall** stated he is still concerned the Legislature declares guilt by the way this bill is drafted. He stated laws should describe what constitutes a violation and upon conviction the punishment should be applied. Then the punishment should be defined. The punishment for the crime listed in this bill is a misdemeanor.

**MOTION:** **Rep. Goesling** made a motion to send **S 1018aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Goesling** will sponsor the bill on the floor.

**S 1019:** **Jason Slade Spillman**, Legal Counsel, Administrative Office of the Courts and Idaho Supreme Court presented **S 1019**. According to Mr. Spillman, Section 5-508 allows the court to serve a civil summons via publication in a newspaper. Currently, the code also directs that a copy be mailed to defendants, but it confusingly requires the clerk to direct such a mailing. A judge actually orders this and not the clerk. This bill corrects the error along with other technical corrections.

**MOTION:** **Rep. Wintrow** made a motion to send **S 1019** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Kerby** will sponsor the bill on the floor.

- S 1021:** **Jason Slade Spillman**, Legal Counsel, Administrative Office of the Courts and Idaho Supreme Court presented **S 1021**, which deals with processing the debts owed to the courts in criminal cases. Mr. Spillman explained this can be satisfied through remaining cash bail monies in deposit. Section 19-2908 allows any money remaining be applied to debts owed to the court after the defendant is found guilty. However, there are two oversights in current law. This bill corrects this by allowing court debts to be paid with remaining bail monies when a judgement is withheld and also can be applied to debts resulting from civil case infractions. In answer to a question from the Committee, Mr. Spillman stated the person posting bail is notified that remaining bail monies are applied to court debts. Yielding to a follow-up question, **Barry Wood**, Senior Judge, Administrative Office of the Courts and Idaho Supreme Court stated, the Idaho Bail Act resulted in guidelines that state bail is placed in deposit and a party posting bail on behalf of another person must sign a notice so they are aware of the consequences for doing so.
- MOTION:** **Rep. Kerby** made a motion to send **S 1021** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Kerby** will sponsor the bill on the floor.
- S 1022:** **Jason Slade Spillman**, Legal Counsel, Administrative Office of the Courts and Idaho Supreme Court presented **S 1022**. Mr. Spillman stated this bill resolves a conflict in two penalty provisions for evading jury duty. This bill repeals § 2-217. I.C. §7-610 is the Legislature's most recent policy expression regarding the maximum penalties for juror contempt and will remain intact.
- MOTION:** **Rep. Kerby** made a motion to send **S 1022** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Gannon** will sponsor the bill on the floor.
- S 1042:** **Jason Slade Spillman**, Legal Counsel, Administrative Office of the Courts and Idaho Supreme Court presented **S 1042**. Mr. Spillman explained that current law requires new magistrate judges to attend the magistrate institute before taking the bench. These judges take the bench at different times, but the institute is only offered once a year. Therefore, this requirement is not practical. This bill amends the law to allow judges to attend the magistrate institute within one year of taking the bench. Mr. Spillman explained magistrate judges attend extensive orientation training.
- MOTION:** **Rep. Wintrow** made a motion to send **S 1042** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Wintrow** will sponsor the bill on the floor.
- S 1043:** **Jason Slade Spillman**, Legal Counsel, Administrative Office of the Courts and Idaho Supreme Court presented **S 1043**. Mr. Spillman stated the number of district judges per district is set by statute. This bill increases the number of judges in the fourth district from 11 to 12. The judge will reside in Ada County. The last time a judge was added was in 2013. Since that time the population has increased 16 percent. Mr. Spillman stated Ada County district judges are feeling the stress of long work hours and burdensome case loads. He reviewed the fiscal note by explaining the counties are obligated to provide work space and staff support. Ada County has acknowledged the need and has agreed to absorb the cost for support. He also explained there currently is a judicial salary compensation bill that mirrors the three percent compensation increase for other state employees. If that bill passes, the fiscal note would increase by \$4,000.
- MOTION:** **Rep. Ehardt** made a motion to send **S 1043** to the floor with a **DO PASS** recommendation.

In answer to a question from the Committee, **Mr. Spillman** stated the return on investment for the \$256,000 needed to fund the new judge and court reporter equates to an improved system for citizens who deserve to have their cases resolved in a timely, fair and efficient manner. Not providing this judgeship compromises Ada County's ability to do this. He also explained the fines and fees collected from the cases this new judge will handle will be dispersed in a myriad of ways based on the priority of payments identified by the Legislature.

**VOTE ON  
MOTION:**

**Chairman Dayley** called for a vote on the motion to send **S 1043** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Amador** will sponsor the bill on the floor.

**ADJOURN:**

There being no further business to come before the Committee, the meeting adjourned at 2:03 p.m.

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Representative Dayley  
Chair

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Wendy Carver-Herbert  
Secretary



AGENDA  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:30 pm OR Upon Adjournment**  
**Room EW42**  
**Thursday, March 07, 2019**

| SUBJECT                  | DESCRIPTION                              | PRESENTER                                                                                                                                            |
|--------------------------|------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| <a href="#">S 1004</a>   | Idaho State Police / Blue Alert System   | Lt. Col. Sheldon Kelly,<br>Idaho State Police                                                                                                        |
| <a href="#">S 1044</a>   | Special Proceedings / Damages            | Barbara Jorden,<br>Idaho Trial Lawyers<br>Association                                                                                                |
|                          | Idaho Criminal Justice Commission Update | Eric Fredericksen,<br>Idaho State Appellate<br>Public Defender<br>and Sara Thomas,<br>Administrative Office<br>of the Courts, Idaho<br>Supreme Court |
| <a href="#">S 1005aa</a> | Human Trafficking                        | Eric Fredericksen                                                                                                                                    |

***If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

|                      |              |               |
|----------------------|--------------|---------------|
| Chairman Dayley      | Rep Ehardt   | Rep Troy      |
| Vice Chairman Chaney | Rep Scott    | Rep Young     |
| Rep Kerby            | Rep Goesling | Rep Gannon    |
| Rep Amador           | Rep Hartgen  | Rep McCrostie |
| Rep Zito             | Rep Marshall | Rep Wintrow   |
| Rep Zollinger        | Rep Ricks    | Rep Davis     |

COMMITTEE SECRETARY

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MINUTES

## HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

**DATE:** Thursday, March 07, 2019

**TIME:** 1:30 pm OR Upon Adjournment

**PLACE:** Room EW42

**MEMBERS:** Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy (Maurin), Young, Gannon, McCrostie, Wintrow, Davis

**ABSENT/  
EXCUSED:** None

**GUESTS:** Barbara Jorden, ITLA; Dena Duncan AAUW, Leila McNeill, Tanea Parmenter, ISP/BCI; Colin Nash, Senate Intern; Mary Mosley

**Chairman Dayley** called the meeting to order at 1:33p.m.

**S 1004:** **Lt. Col. Sheldon Kelley**, Deputy Director, Idaho State Police presented **S 1004**. Lt. Col. Kelley stated the bill would establish a Blue Alert system in Idaho in accordance with the National Blue Alert Network that was established at the Federal level. The system will be integrated into the Amber Alert system and will have minimal fiscal impact. It will alert citizens, law enforcement and media when a violent offender is on the loose and poses an imminent and credible threat to law enforcement and the public. The bill details the criteria for issuing a Blue Alert. In answer to a question from the Committee, Lt. Col. Kelley said 33 states use the system and seven more are working to implement. The system will also send alerts to mobile phones similarly to Amber Alerts.

**MOTION:** **Rep. Goesling** made a motion to send **S 1004** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Giddings** will sponsor the bill on the floor.

**S 1044:** **Barbara Jorden**, Idaho Trial Lawyers Association presented **S 1044**. Last year the Legislature passed a bill to increase the limit to \$35,000 for cases under the Small Lawsuit Resolution Act. The evaluation limit on claims under Section 7-1509 was inadvertently unchanged so this bill brings this section into alignment with the \$35,000 limit set forth in the Act. Ms. Jorden stated this will create a smoother process for bringing small lawsuits forward.

**MOTION:** **Rep. McCrostie** made a motion to send **S 1044** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. McCrostie** will sponsor the bill on the floor.

**Eric Fredericksen**, State Appellate Public Defender and **Sara Thomas**, Administrative Director of the Courts presented an update on the Idaho Criminal Justice Commission (ICJC). Mr. Fredericksen provided an overview of the ICJC purpose. The Commission was created to bring together all branches of government who have with a connection to the criminal justice system so significant issues can be more effectively addressed and resolved. The vision is to create a safer Idaho. Ms. Thomas provided an overview of the subcommittees which include Mental Health; Research Alliance; Human Trafficking; Grant Review Council and Community College. She also highlighted the ICJC dashboard and Mental Health Summit that will be held this summer. Mr. Fredericksen stated the Human Trafficking subcommittee is working to address gaps in enforcement and to provide greater support for victims. In answer to questions from the Committee,

Ms. Thomas stated Commission is very open to topics and groups would like to bring issues forward. Citizens and the Legislature are welcome to attend meetings.

**S 1005aa:**

**Eric Frederickson**, State Appellate Public Defender presented **S 1005aa**.

Mr. Frederickson stated the legislative intent of the bill is to acknowledge the presence of human trafficking in Idaho. It also promotes the importance of the law enforcement community receiving training to increase awareness and response to human trafficking cases. The bill adds language identifying conduct that may be considered labor trafficking and more clearly defines sex trafficking. Mr. Frederickson explained the bill makes human trafficking its own offense and no longer requires the crime be committed in conjunction with the commission of another crime.

**MOTION:**

**Rep. Scott** made a motion to **HOLD S 1005aa** in committee for time certain, March 11, 2019.

Speaking **in support** of the motion, **Reps. Scott and Zollinger** said **S 1005aa** is a good bill that they will vote to support, but holding the bill in Committee a few days would allow the Senate Judiciary and Rules Committee time to consider hearing additional House bills.

**SUBSTITUTE MOTION:**

**Rep. Chaney** made a substitute motion to send **S 1005aa** to the floor with a **DO PASS** recommendation.

Speaking to the substitute motion, **Rep. Chaney** said it's important to keep the focus on Idahoans who are protected by this bill. It is being brought forward through a collaborative process with bipartisan support.

**AMENDED SUBSTITUTE MOTION:**

**Rep. Zollinger** made a motion to **HOLD S 1005aa** in Committee for time certain March 13, 2019.

**Reps. Zollinger, Zito and Scott** spoke **in support** of the amended substitute motion because it supports the message that it's important for both bodies of the Legislature to do the will of the people.

**ROLL CALL VOTE ON AMENDED SUBSTITUTE MOTION:**

Roll call vote was requested. **Motion failed by a vote of 6 AYE, 11 NAY, 1 Absent/Excused. Voting in favor** of the motion: **Reps. Zito, Zollinger, Ehardt, Scott, Young, Gannon. Voting in opposition** to the motion: **Reps. Chaney, Kerby, Goesling, Hartgen, Marshall, Ricks, Troy, McCrostie, Wintrow, Davis, Dayley. Rep. Amador** was **Absent/Excused**.

**ROLL CALL VOTE ON SUBSTITUTE MOTION:**

**Chairman Dayley** called for a roll call vote. **Motion carried by a vote of 16 AYE, 2 Absent/Excused. Voting in favor** of the motion: **Reps. Chaney, Kerby, Zito, Zollinger, Ehardt, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis, Dayley. Reps. Amador and Scott** were **Absent/Excused. Rep. Wintrow** will sponsor the bill on the floor.

**ADJOURN:**

There being no further business to come before the Committee, the meeting adjourned at 2:31 p.m.

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Representative Dayley  
Chair

---

Wendy Carver-Herbert  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
1:30 pm OR Upon Adjournment  
Room EW42  
Monday, March 11, 2019

| SUBJECT                | DESCRIPTION                      | PRESENTER                   |
|------------------------|----------------------------------|-----------------------------|
| <a href="#">S 1119</a> | Civil Actions / Order of Renewal | Senator Anthon              |
| <a href="#">S 1117</a> | Harassment / Protection Order    | Senator Burgoyne            |
| <a href="#">H 197</a>  | Divorce / Child Custody          | Representative<br>Zollinger |

Testimony will be limited to three  
minutes per person

***If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

|                      |              |               |
|----------------------|--------------|---------------|
| Chairman Dayley      | Rep Ehardt   | Rep Troy      |
| Vice Chairman Chaney | Rep Scott    | Rep Young     |
| Rep Kerby            | Rep Goesling | Rep Gannon    |
| Rep Amador           | Rep Hartgen  | Rep McCrostie |
| Rep Zito             | Rep Marshall | Rep Wintrow   |
| Rep Zollinger        | Rep Ricks    | Rep Davis     |

COMMITTEE SECRETARY

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MINUTES

## HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

**DATE:** Monday, March 11, 2019

**TIME:** 1:30 pm OR Upon Adjournment

**PLACE:** Room EW42

**MEMBERS:** Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis (Goldman)

**ABSENT/  
EXCUSED:** Representative Troy

**GUESTS:** Senator Jim Rice; Rob Squire, D.L. Evans Bank; Brandon Durst; Matt Byrne; David Oliphant; Dr. Jeff Brouman; Major Mark Bost, American's For Equal Shared Parenting; Regina Bost; Greg Hodger; Shantelle Oliphant; Natasha Harrington; Jayme Sullivan, AOC/ISC; Annie Hightower, ICASDV; Vince Skinner, BSU Professor; Sid Page

**Chairman Dayley** called the meeting to order at 1:30 p.m.

**MOTION:** **Rep. Marshall** made a motion to approve the minutes of March 1, 2019 and March 5, 2019. **Motion carried by voice vote.**

**S 1119:** **Sen. Anthon** presented **S 1119**. Sen. Anthon stated this is a defect clean up bill that makes it easier to understand the law as it relates to renewal on judgements. He yielded his time to **Robert Squire**, Vice President, Corporate Council, D.L. Evans Bank. Mr. Squire said the purpose of the bill is to clarify existing code, but not change it. It is not clear from the current language that entry of judgment includes entry of an order renewing judgment. If the language were intended to only run from the date of entry of judgment and not entry of renewals of judgment it is unclear what rights, if any, are actually granted by renewal of judgment. He said he believes the case law supports this change. He said the bank supports this bill because it has run into an issue in another state. This is to avoid similar problems in Idaho. It is genuinely confusing to attorney's and it can be clearer to creditors.

**MOTION:** **Rep. Zollinger** made a motion to send **S 1119** to the floor with a **DO PASS** recommendation. Speaking to the motion, Rep. Zollinger thanked the sponsor for bringing this bill forward and stated it will clarify the renewal of judgements. **Motion carried by voice vote.** **Rep. Zollinger** will sponsor the bill on the floor.

**S 1117:** **Sen. Burgoyne** presented **S 1117**. Sen. Burgoyne stated the legislation he drafted and was passed in 2016 was good, but it did not clearly state petitions for civil protection orders for harassment could be dismissed without hearing. This bill amends the law to more prominently state the criteria warranting the issuance of a protection order, and gives judges the authority, without hearing, to dismiss petitions that fail to state the facts sufficient to warrant a protection order. He stated it narrows the types of telephone harassment complaints that can be filed for protection orders and clarifies the intent of the law, which is to deal with serious threats and acts of violence.

**MOTION:** **Rep. Chaney** made a motion to send **S 1117** to the floor with a **DO PASS** recommendation.

In answer to a question from the Committee, **Rep. Burgoyne** stated the language on line 32 of page one is from the original criminal code, which was written a long time ago and he does not know it's exact meaning.

**VOTE ON  
MOTION:**

**H 197:**

**Chairman Dayley** called for a vote on the motion. **Motion carried by voice vote.**  
**Rep. Chaney** will sponsor the bill on the floor.

**Rep. Zollinger** presented **H 197**. Rep. Zollinger stated that while science has shown in the past there are certain periods of a child's life when one relationship with one parent is important, new studies are showing that a child's relationship with both parents is important. Shared parenting is better for children as shown through science. He stated Arizona and Utah have adopted shared parenting laws and 20 other states are looking into it. He explained this bill is less restrictive than the Utah law and it doesn't require a specific number of days a child must spend with a parent. Rep. Zollinger stated the bill clarifies the existing guidance provided to family law judges with regards to child custody. It includes a rebuttal presumption that an award of equal, shared parenting time to each parent is in the best interests of the child. It must be based on a preponderance of evidence in accordance with the facts and it allows the judges to have discretion to make sure the best interests of the child is taken into consideration. It lists the criteria a judge can take into consideration. In reference to the fiscal note, he stated there's been no indication of a large judicial burden in Arizona and Utah. He stated the judges will need to provide written finding of fact and conclusions of law, which can eliminate confusion and protect against potential bias. Findings can be short and shouldn't be burdensome. Written findings is the same thing required of judges in many other types of cases. He said he spoke with the Attorney General's office and there aren't any constitutional issues, but there may be a potential for a constitutional challenge.

**Rep. Chaney** invoked Rule 38.

In answer to questions from the Committee, **Rep. Zollinger** stated he did not expect a large impact due to people wanting to re-litigate after the bill passes. The cost to the courts is not expected to be more than usual because judges are already going through the same factors in cases they review now. He explained he has been working on some version of this issue and bill since his freshman year in the legislature. This bill was brought to him late in the session this year, but it has been vetted based on hundreds of conversations with family law attorneys, judges and families.

**Rep. Zollinger** yielded questions from the Committee to **Jerry Papin**, Idaho Parents Organization and National Parents Association. Mr. Papin stated many judges are doing a good job, but people are having widely different experiences. Judges aren't using a consistent system. He explained the rights of parents in the armed services and grandparents have been discussed, and there are several issues they'd like to address, but they chose not to include them in this bill so it would be more palatable. He reiterated the bill is about ensuring the continuity of the relationship with both parents and is supported by science. He stated the bill is a starting place for judges by establishing a presumption of equal parenting; judges have to do what they do in other parts of law by providing written finding of fact and conclusions of law; and it adds language for domestic violence protections. He said the Attorney General's office comment regarding a potential constitutional challenge regards a very narrow interpretation and this bill does not change the current law with regard to right to travel.

**Sen. Rice** spoke in opposition to **H 197**. Sen. Rice stated this legislation is more restrictive than Utah and the Arizona law is similar to Idaho. He said the courts have stated it would take more judges to handle the additional burden created by this bill because it will generate fewer settlements and more trials. He explained child custody case settlements can be separated into three general categories. The first, and majority, settle through mediation. The second type of cases settle after a parenting time evaluation is completed and both parties receive a professional analysis. The third type of cases are settled by the courts, which comprises a small percentage of cases. He stated there is no bias to men or women in Idaho. There isn't a bias against servicemen and women. Judges do favor the children. In answer to questions from the Committee, Sen. Rice said he believes mediation will be less successful with this bill. He also stated the bill replaces the focus on actual parenting time versus overnights, which correlates to child support. He said he expects to see everyone who doesn't have 50/50 overnight custody back into court for reconsideration. He explained that child support is based on a formula that includes the number of overnights, respective income of parents, and a few adjustors such as cost of health insurance and who will claim the child on income tax. When you change the number of overnights, child support payouts can change.

**Vince Skinner, Brandon Durst, Matt Byrne, David Oliphant, Dr. Jeff Brouman, Major Mark Bost, Regina Bost, Natasha Harrington and Sid Page** spoke in support of **H 197**. They each shared their personal stories. They stated: the current law does not allow for due process; it hurts relationships between children, parents, grandparents and alienates them from one side of their family tree. They stated a growing body of research supports shared parenting because it can increase the emotional security of the child and create better long-term outcomes when compared to children with only one parent. They explained their experience with the judicial process has shown bias toward one parent over another and did not ask or take any of their facts into consideration. They stated this bill is about preserving the relationship with children, not about the money – the financial cost can be extensive when fighting for more time with their children. It was explained while overnight visits are not the same as parenting time, overnight visits are just as valuable in building and nurturing relationships with children. Mr. Byrne and Mr. Oliphant stated that despite their ex's agreeing to shared time initially, the judges in their cases allowed less time with the child/children. Ms. Harrington stated that starting on equal ground is a good place to start in divorce and separation because it can remove the reason for the conflict.

**Annie Hightower**, Policy Director for the Idaho Coalition Against Sexual and Domestic Violence spoke in opposition to **H 197**. She stated she was unable to find peer reviewed articles on equal parenting time. Current law looks at what is in the best interest of the children. She said she agrees that shared parenting is good, but it should be looked at on a case by case basis and this bill strips judges of power to make decisions. In answer to questions from the Committee, Ms. Hightower said it is unclear what the preponderance of evidence is and would need to be clarified. She also responded by stating the removal of the language "relevant factors" on lines 32 and 33 of page one is concerning and would require the courts to create new case law.

In response to opposing testimony, **Mr. Papin**, stated family law attorneys do have an important say in this legislation, but they also have a financial stake in the game. He also explained the existing law addresses domestic violence and the bill enhances the domestic violence protections. He said there should be a presumption that shared custody is not acceptable if domestic violence is present.

**MOTION:**

**Rep. Marshall** made a motion to send **H 197** to the floor with a **DO PASS** recommendation.

**SUBSTITUTE  
MOTION:**

**Rep. Chaney** made a substitute motion to **HOLD H 197** in committee.

Speaking to the substitute motion, **Rep. Chaney** stated the Arizona law is almost word-for-word similar to Idaho's law. Idaho's current law allows for at least 35 percent custody and does take into consideration the best interests of children. He also said if judges are going to get it wrong, then it may be a matter of more education. If the bill passes, it will open the door to more re-litigation.

**Reps. Ehardt, Young, Goesling, Ricks and Zito** spoke in opposition to the substitute motion. Their comments included: family values mean both parents need to be involved with the children; it is important for fathers to be involved in their children's lives, especially male children; based on the data, Idaho is not as strong on equal parenting time; this bill asks judges to approach these decisions from a basis of innocence; this is an opportunity to expect dads to step up and believe many will; the bill gives judges the freedom to make decisions and allow them to look at more equal factors; by starting in the middle, it allows a balance of justice, and then other circumstances can be taken into consideration; and it will be less likely for children to become pawns.

**Rep. McCrostie** invoked rule 38.

**Reps. Amador, Hartgen, Wintrow, McCrostie and Kerby** spoke in support of the substitute motion. Their comments included: conceptually it is a good idea, but it would be good to hear from other individuals involved in family law; the change will spawn more litigation; judges take these matters seriously and take all information into consideration and should not be forced into a predetermined presumption; concern the fiscal note is not accurate; 80 to 90 percent of these cases get settled outside of court and get worked out; and it will open the door to re-litigation.

**ROLL CALL  
VOTE ON  
SUBSTITUTE  
MOTION:**

**Chairman Dayley** called for a roll call vote to **HOLD H 197** in Committee. **Substitute motion carried by vote of 9 AYE, 8 NAY, 1 Absent/Excused. Voting in favor** of the motion: **Reps. Chaney, Kerby, Amador, Hartgen, Gannon, McCrostie, Wintrow, Goldman, Dayley. Voting in opposition** to the motion: **Reps. Zito, Zollinger, Ehardt, Scott, Goesling, Marshall, Ricks, Young. Rep. Troy** was **Absent/Excused**.

**ADJOURN:**

There being no further business to come before the Committee, the meeting was adjourned at 4:49 p.m.

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Representative Dayley  
Chair

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Wendy Carver-Herbert  
Secretary



AGENDA  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:00 P.M.**  
**Room EW42**  
**Wednesday, March 13, 2019**

| <b>SUBJECT</b>                | <b>DESCRIPTION</b>                   | <b>PRESENTER</b>                                                                               |
|-------------------------------|--------------------------------------|------------------------------------------------------------------------------------------------|
| <a href="#"><u>H 266</u></a>  | Sexual Assault Evidence Kits         | Representative Wintrow                                                                         |
| <a href="#"><u>S 1134</u></a> | Master and County Jury Lists         | Jason Slade Spillman,<br>Idaho Administrative<br>Office of the Courts /<br>Idaho Supreme Court |
| <a href="#"><u>S 1093</u></a> | Pretrial Supervision Services / Fees | Seth Grigg, Idaho<br>Association of<br>Counties                                                |
| <a href="#"><u>S 1116</u></a> | Liquor Account, Appropriation        | Seth Grigg                                                                                     |
| <a href="#"><u>S 1122</u></a> | Juvenile Probation Fee               | Seth Grigg                                                                                     |
| <a href="#"><u>S 1123</u></a> | Debt Owed to the Court               | Seth Grigg                                                                                     |

***If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

|                      |              |                    |
|----------------------|--------------|--------------------|
| Chairman Dayley      | Rep Ehardt   | Rep Troy           |
| Vice Chairman Chaney | Rep Scott    | Rep Young          |
| Rep Kerby            | Rep Goesling | Rep Gannon         |
| Rep Amador           | Rep Hartgen  | Rep McCrostie      |
| Rep Zito             | Rep Marshall | Rep Wintrow        |
| Rep Zollinger        | Rep Ricks    | Rep Davis(Goldman) |

COMMITTEE SECRETARY

Wendy Carver-Herbert  
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Phone: 332-1127  
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MINUTES

## HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

**DATE:** Wednesday, March 13, 2019

**TIME:** 1:00 P.M.

**PLACE:** Room EW42

**MEMBERS:** Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott (Paterson), Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis (Goldman)

**ABSENT/  
EXCUSED:** None

**GUESTS:** Charlie Spencer, ISP; Dawn Burns, Ada County Juvenile Court; Barry Wood, Jason Spillman; ISC, Annie Hightower, ICASDV; Katherine Kerner, St. Lukes; Darren Mitchell, Curt Crum, Boise City Police; Jeremy Chou, Givens Pursley; Nancy Volle, SOMB; Toni Lawson, Idaho Hospital Assoc.

**Chairman Dayley** called the meeting to order at 1:06 p.m.

**H 266:** **Rep. Wintrow** presented **H 266**. This legislation clarifies that when an adult victim of sexual assault comes to the hospital for an anonymous sexual assault medical forensic exam, the hospital staff will not be required to report the injury to police in order to protect the anonymity of the victim. Idaho statute 67-2919 defines conditions for the collection of an anonymous sexual assault evidence kit according to the Violence Against Women Act. **Rep. Wintrow** said this legislation clarifies policy for reporting injury when the adult sexual assault victim submits to collection of evidence. It protects victims' rights. This bill provides a very narrow definition of what shall be kept anonymous. If passed, law enforcement will take custody of the evidence, but the personal information of the victim will not be reported.

**MOTION:** **Rep. McCrostie** made a motion to send **H 266** to the floor with a **DO PASS** recommendation.

**AMENDED  
MOTION:** **Rep. McCrostie** amended his original motion to include **H 266** be sent directly to the second reading calendar.

In answer to questions from the Committee **Rep. Wintrow** stated the number of sexual assaults are already being counted. She explained the sexual assault evidence kits are collected anonymously if the victim chooses because they are often traumatized and don't know what to do at the time. This gives law enforcement a way to collect, track and preserve evidence. Every kit is numbered, the number is assigned to the victim who has the ability to track its status through the system. She stated it is very difficult for a criminal case to be prosecuted without the victim's permission.

**VOTE ON  
MOTION:** **Chairman Dayley** called for a vote on the motion. **Motion carried by voice vote.** **Rep. Wintrow** will sponsor the bill on the floor.

**S 1134:** **Jason Slade Spillman**, Legal Counsel, Administrative Office of the Courts, Idaho Supreme Court presented **S 1134**. This bill will permit the Supreme Court access to the data in the court's Odyssey case management system to compile and maintain a statewide master jury list. Additionally, it will direct the court to divide the list into county jury lists for use by the counties, if they opt in to do so. Juries are made up of residents in the counties where the juries serve. It amends six different statutes, but §2-206 and §2-207 are where the most substantial changes are reflected. He stated several counties have expressed an interest in the system.

In answer to questions from the Committee, **Mr. Spillman** explained the lists compiled by the Idaho Supreme Court through the Odyssey system are pulled from the same types of information that counties use to create their jury lists. He said the county lists will only include county residents in the county where the jury list applies. This bill allows the courts to take advantage of efficiencies already built into the Odyssey system and provide extra functionality such as text capability for jury reminders. He reiterated the program would be voluntary and counties that choose to opt-in may also opt-out in the future. He was not familiar with whether the system had the functionality to identify voter fraud.

**MOTION:**

**Rep. Amador** made a motion to send **S 1134** to the floor with a **DO PASS** recommendation.

Speaking to the motion, **Rep. Amador** stated it's not always easy to manage data at a small county level. Some counties are asking for this and as people move from county to county this system can help. It also takes advantage of a significant investment the state has already made.

**Reps. Marshall and Ehardt** spoke in **opposition** to the motion. They stated the role of assembling jury lists has long been the responsibility of the counties. They are doing a good job and there may be unknown consequences.

In answer to questions from the Committee, **Mr. Spillman** stated he was unable to enumerate the cost savings to counties because every county is different. Some have not had a jury trial in years and other counties are calling juries on a regular basis. It can be assumed there would be some level of cost savings for those counties. He clarified this legislation does not change the responsibilities of the county jury commissions, this merely allows them a source for pulling their jury lists. He said that jury lists compiled by the counties are currently open to the public.

**Reps. Troy, Hartgen, and Zollinger** spoke in **support** of the motion. Their comments included: this can support small counties who don't have the resources to easily compile jury list; the jury commissions for each county are still responsible for preserving the sacredness of the process; it has the potential to provide more accurate and up-to-date lists and can avoid calling jurors who are deceased; it can financially save the counties money; and it's voluntary.

**VOTE ON MOTION:**

**Chairman Dayley** called for a vote on the motion to send **S 1134** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Reps. Marshall and Ehardt** requested to be recorded as voting **NAY**. **Rep. Hartgen** will sponsor the bill on the floor.

**S 1093:**

**Seth Grigg**, Idaho Association of Counties presented **S 1093**. Many counties have established pretrial release supervision programs to monitor people on pretrial release. This legislation codifies existing pretrial release supervision programs, establishes parameters for the establishment of pretrial supervision fees, and establishes that pretrial release supervision fees are to be collected by the clerk of the court. Sometimes there are conditions such as drug/alcohol testing or monitors that are placed on defendants while they are awaiting trial. Thirty counties offer pretrial release programs. Ten counties have established pretrial release program fees. He walked through the specifics of the bill which address the priority of payments in the court's Odyssey system and how fees will be applied. Mr. Grigg stated that defendants who are found not guilty will not be required to pay fees for their services. The legislation also allows counties the option of allowing offenders to pay the fees for services such as electronic monitors and drug or alcohol testing to the clerk of the court, or directly to the service providers.

**MOTION:**

**Rep. Gannon** made a motion to send **S 1093** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Gannon** will sponsor the bill on the floor.

- S 1116:** **Seth Grigg**, Idaho Association of Counties presented **S 1116**. This bill corrects a technical error in the distribution language in Idaho Code §23-404. This law states how liquor funds are distributed. In 2018, the distribution to cities and counties was amended to allocate a portion of their funds to the Magistrate division of the district court. The technical error has prevented a portion of these funds from being distributed by the liquor division. It also includes an emergency clause to allow funds already dedicated to the magistrate district courts to be distributed.
- MOTION:** **Rep. Chaney** made a motion to send **S 1116** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Ehardt** will sponsor the bill on the floor.
- S 1122:** **Seth Grigg**, Idaho Association of Counties presented **S 1122**. Currently there is not a statutory fee for juvenile probation supervision, and yet they can be placed on probation for up to three years. Some counties have collected the court ordered fees through the court's Odyssey system, but effective June 2019, Odyssey will no longer be configured to allow court ordered juvenile probation fees to be collected. As a result, the counties would be required to create new tracking and collection portals outside of Odyssey. This bill establishes a statutory juvenile probation supervision fee and it specifies that revenues from these fees are to be used exclusively for county juvenile probation services.
- MOTION:** **Rep. Troy** made a motion to send **S 1122** to the floor with a **DO PASS** recommendation.
- Dawn Burns**, Director, Juvenile Court Services for Ada County, yielded to a question from the Committee. She stated when juveniles are ordered to pay for their supervision fees, it is done with the understanding that the parent or guardian is responsible for this if the juvenile is unable to pay. She explained the judge has oversight to determine what is fair and works with the juvenile to establish a plan.
- VOTE ON MOTION:** **Chairman Dayley** called for a vote on the motion. **Motion carried by voice vote.** **Rep. Gannon** will sponsor the bill on the floor.
- S 1123:** **Seth Grigg**, Idaho Association of Counties presented **S 1123**. Idaho law allows the Idaho Supreme Court to work with the State Tax Commission to intercept eligible state income tax returns from those owing debts to any of Idaho's courts. The provisions do not apply to infractions or debts less than \$50. This legislation amends this by allowing tax intercepts on any debts owed to the courts, including civil and juvenile debts. This change will assist the courts in collecting fines and fees that are legally owed to the courts. In answer to a question from the Committee, Mr. Grigg said there is a cost to the court, but the revenue is expected to offset the costs. He also said the Tax Commission is aware of and onboard with this legislation.
- MOTION:** **Rep. Amador** made a motion to send **S 1123** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Amador** will sponsor the bill on the floor.
- ADJOURN:** There being no further business to come before the Committee, the meeting adjourned at 2:23 p.m.

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Representative Dayley  
Chair

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Wendy Carver-Herbert  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
Upon Adjournment  
Room EW42  
Friday, March 15, 2019

| SUBJECT                  | DESCRIPTION                               | PRESENTER                                                                               |
|--------------------------|-------------------------------------------|-----------------------------------------------------------------------------------------|
| <a href="#">S 1133</a>   | Criminal Justice Reinvestment Committee   | Senator Lodge                                                                           |
| <a href="#">S 1023</a>   | Assault & Battery / Parks & Rec Employees | Senator Johnson                                                                         |
| <a href="#">S 1091aa</a> | Mentally Ill / Hearing Continuance        | Jason Slade Spillman,<br>Administrative Office<br>of the Courts /Idaho<br>Supreme Court |

***If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

|                      |                     |                    |
|----------------------|---------------------|--------------------|
| Chairman Dayley      | Rep Ehardt          | Rep Troy           |
| Vice Chairman Chaney | Rep Scott(Paterson) | Rep Young          |
| Rep Kerby            | Rep Goesling        | Rep Gannon         |
| Rep Amador           | Rep Hartgen         | Rep McCrostie      |
| Rep Zito             | Rep Marshall        | Rep Wintrow        |
| Rep Zollinger        | Rep Ricks           | Rep Davis(Goldman) |

COMMITTEE SECRETARY

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MINUTES

## HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

**DATE:** Friday, March 15, 2019

**TIME:** Upon Adjournment

**PLACE:** Room EW42

**MEMBERS:** Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott (Paterson), Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis (Goldman)

**ABSENT/  
EXCUSED:** Representatives Zollinger, Ehardt, Wintrow

**GUESTS:** Jason Spillman, Barry Wood, AOC/ISC

**Chairman Dayley** called the meeting to order at 12:42 p.m.

**S 1091aa:** **Jason Spillman**, Legal Counsel, Administrative Office of the Courts, Idaho Supreme Court presented **S 1091aa**. The commitment process of a proposed mentally ill person requires an examination and evaluation by two designated examiners and at least one must be a psychiatrist, physician, or psychologist. This legislation allows a petitioner seeking to commit a proposed mentally ill person a continuance of the commitment hearing. At times it is impossible to obtain a second designated examiner within the statutory time frames. The continuance must be based on good cause. Under current law, the petitioner is not able to file for a continuance and if the second evaluation is not completed within the statutorily required time frame, the case is dismissed even if the proposed patient still meets the criteria for commitment. This forces the petitioner to file again and the process begins all over again, delaying treatment. Mr. Spillman explained the Senate amended the amount of time for a continuance from 14 days to five days.

**Chairman Dayley** pointed out the Statement of Purpose (SOP) still said the continuance period was listed as 14 days. He said the Committee would work with **Mr. Spillman** to correct the SOP to reflect the same continuance period as reflected in the amended bill.

**MOTION:** **Rep. Goesling** made a motion to send **S 1091aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Gannon** will sponsor the bill on the floor.

**S 1023:** **Rep. Young** presented **S 1023**. This legislation changes the law to include certain employees of the Department of Parks and Recreation to the list of personnel covered under I.C. §18-915. This section of code relates to punishments for assault and battery and came about as a result of a constituent request.

**Sen. Johnson** further explained **S 1023** and answered questions from the Committee. He stated the issue arose last summer when a parks employee was trying to enforce park regulations and was assaulted. The case was dismissed because parks employees are not covered under this section of Idaho code. He said Department of Water Resources employees are covered. The Director of the Department of Parks and Recreation can delegate authority to employees to enforce State and park regulations and cite non-compliance. Employees attend non-certified training at the Peace Officers Standards and Training academy. Sen. Johnson clarified this legislation covers State Parks and Recreation employees.

**MOTION:** **Rep. McCrostie** made a motion to send **S 1023** to the floor with a **DO PASS** recommendation.

Speaking **in support** of the motion, **Rep. Amador** stated these employees are tasked with the responsibility to issue citations and they could be in danger.

**Rep. Paterson** stated concerns about giving special protections to one class of citizens over others, especially if they don't wear a badge. Constitutionally, all rights are the same.

**VOTE ON  
MOTION:**

**Chairman Dayley** called for a vote on the motion. **Motion carried by voice vote.** **Rep. Young** will sponsor the bill on the floor.

**S 1133:**

**Sen. Lodge** presented **S 1133**. This legislation extends the sunset from 2019 to 2023 for the Criminal Justice Reinvestment Committee. This is an interim oversight committee comprised of members from both bodies of the Legislature. It's purpose is to monitor, study and guide analysis and policy development in all aspects of the criminal justice system. **Sen. Lodge** stated the committee was started in 2014 and it has made good progress in gathering data and starting to understand where reinvestment is most needed, but there is more work to be done.

**MOTION:**

**Rep. McCrostie** made a motion to send **S 1133** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. McCrostie** will sponsor the bill on the floor.

**ADJOURN:**

There being no further business to come before the Committee, the meeting adjourned at 1:20 p.m.

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Representative Dayley  
Chair

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Wendy Carver-Herbert  
Secretary

**AMENDED AGENDA #4**  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:30 pm or Upon Adjournment**  
**Room EW42**  
**Tuesday, March 19, 2019**

| SUBJECT                     | DESCRIPTION                     | PRESENTER                                                  |
|-----------------------------|---------------------------------|------------------------------------------------------------|
| <a href="#">H 118aa,aaS</a> | Pretrial Risk Assessment Tools  | Representative Chaney                                      |
| <a href="#">S 1146</a>      | Supreme Court Justices / Salary | Sara Thomas,<br>Administrative Office<br>of the Courts     |
| <a href="#">S 1003aa</a>    | Human Trafficking / Diversion   | Eric Fredericksen,<br>Idaho Criminal Justice<br>Commission |
| <a href="#">S 1110aa</a>    | Bail Enforcement Agents         | Mike Kane, Idaho<br>Sheriff's Association                  |

***If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

|                      |              |               |
|----------------------|--------------|---------------|
| Chairman Dayley      | Rep Ehardt   | Rep Troy      |
| Vice Chairman Chaney | Rep Scott    | Rep Young     |
| Rep Kerby            | Rep Goesling | Rep Gannon    |
| Rep Amador           | Rep Hartgen  | Rep McCrostie |
| Rep Zito             | Rep Marshall | Rep Wintrow   |
| Rep Zollinger        | Rep Ricks    | Rep Davis     |

COMMITTEE SECRETARY

Wendy Carver-Herbert  
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MINUTES

## HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

**DATE:** Tuesday, March 19, 2019

**TIME:** 1:30 pm or Upon Adjournment

**PLACE:** Room EW42

**MEMBERS:** Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis

**ABSENT/  
EXCUSED:** Representative Kerby

**GUESTS:** Eric Fredericksen, SAPD; Sara Thomas, Barry Wood, Andrea Patterson, ISC; Mike Kane, ISA; Jesse Taylor, ABC; Nicole Fitzgerald, Council on DV; Sheriff Kieran Donahue, CCSO/ISA; Melinda Merrill, Idaho Bail Coalition; Dan Kittle, Safe Harbor

**Chairman Dayley** called the meeting to order at 1:33p.m.

**MOTION:** **Rep. Marshall** made a motion to approve the minutes of March 7, 2019. **Motion carried by voice vote.**

**H 118aa,aaS:** **Rep. Chaney** brought **H 118aa,aaS** before the Committee again for consideration of the Senate amendments. This clarifies grammar as brought to him by the Idaho Supreme Court so the bill clearly states what is intended. Rep. Chaney stated he requested the Senate amend the language and those changes are reflected in the amendment.

**MOTION:** **Rep. Ehardt** made a motion to concur with the amendments made in the Senate to **H 118aa,aaS**. **Motion carried by voice vote.** **Rep. Chaney** will sponsor the bill on the floor.

The Committee discussed protocol as it relates to Committee members voting to support a bill in Committee and then changing their votes on the floor. **Chairman Dayley** stated it is a member's prerogative to change their minds about a bill at any time in the process. It is recommended that members let bill sponsors and the Committee Chairman know prior to the floor vote out of courtesy and respect.

The Committee also discussed the practice of allowing non-House/Senate members, including the public, to present bills in Committee. **Chairman Dayley** explained it is preferred to have House and Senate sponsors present bills in Committee because it helps sponsors become more comfortable with the details to present bills on the floor. However, it is the Chairman's prerogative to allow non-legislators to present in Committee. He stated he is allowing the Senate bills to be presented by the experts because the Committee hasn't had the opportunity to hear the bills previously.

**Rep. Chaney** clarified the process for approving bill amendments.

**S 1146:** **Chairman Dayley** introduced **S 1146** and the presenter by stating the Committee has the unique role of reviewing and recommending judges salaries to the Legislature because the courts are an independent branch of government.

**Sara Thomas**, Administrative Director of the Courts presented **S 1146**. This bill addresses Idaho's judicial salaries. Ms. Thomas explained how the salaries are structured for the four types of judgeships. Unlike other state employees, salaries are not set through the budget process. Judge salaries are set by statute as required by the Idaho Constitution under article 5 section 17. She explained they are seeking an increase in CEC because judges make critical life affecting decisions as they relate to life, liberty, property, and Idaho's children, to name a few. She stated the judiciary wants to attract the best and brightest, but they are having difficulty filling these positions. Instead, experienced and talented attorney's choose to continue practicing law as an attorney because the opportunities for financial compensation, life balance and freedom to express opinions are greater. Compensation is one of the top reasons for discouraging candidates from applying. The judiciary worked with the chairmen of the Senate and House Judiciary committees to establish the proposed 2.95% increase.

**MOTION:**

**Rep. Zollinger** made a motion to send **S 1146** to the floor with a **DO PASS** recommendation.

Speaking to the motion, **Rep. Zollinger** stated it's important to keep qualified judges and the best way to recruit and retain judges is through competitive salaries. **Rep. Hartgen** concurred.

In answer to questions from the Committee, **Ms. Thomas** explained the judiciary did ask for salary increases last year and will continue to do so as long as recruitment continues to be an issue. She stated, Idaho ranks 11 out of 13 when comparing compensation to judges salaries in 13 western states and is ranked 41st nationally. She also said judges are leaving early and later in their careers to go to other opportunities.

**Chairman Dayley**, stated it is the Committee's obligation to review the entire compensation package for judges and make recommendations to the Legislature for approval. Chairman Dayley, the Chairman of the Senate Judiciary Rules Committee and the courts are going to meet over the interim to look at all aspects of judges compensation to sort out some issues. He stated a letter formalizing this has been signed. (Attachment) The goal is to create a more orderly process for determining the judges compensation in the future.

**VOTE ON MOTION:**

**Chairman Dayley** called for a vote on the motion to send **S 1146** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Hartgen** will sponsor the bill on the floor.

**S 1003aa:**

**Eric Fredericksen**, Chairman of Human Trafficking Subcommittee, Idaho Criminal Justice Commission, presented **S 1003aa**. Mr. Fredericksen explained the subcommittee has evaluated statutes as they relate to human trafficking. This legislation creates "Safe Harbor Provisions" for minor aged victims of human trafficking. The subcommittee looked at data from Shared Hope International who compiles information for comparison on a state-by-state basis on how states are managing human trafficking crimes and victims. Idaho's current laws do not compare well, as they relate to prosecution and criminalization of victims involved in the commercial sex trade as a direct result of human trafficking. This, along with the assessment that Idaho does not provide a statutory avenue to specialized services for juvenile victims, is the impetus for this bill. The bill outlines a diversionary program that takes the specialized circumstances of juvenile human trafficking victims into account and it allows human trafficking victims an affirmative defense for certain crimes. In answer to questions from the Committee, Mr. Fredericksen explained the diversion programs are not yet in place, but the new statute, if approved, will make it possible to apply for Federal and private grants.

- MOTION:** **Rep. Wintrow** made a motion to send **S 1003aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Wintrow** will sponsor the bill on the floor.
- S 1110aa:** **Mike Kane**, on behalf of the Idaho Sheriff's Association presented **S 1110aa**. This bill sets guidelines for the profession of bounty hunting. This bill is a compromise. It takes into account the needs of law enforcement, bail enforcement agents and department of insurance. Currently, there are no laws that regulate the profession, but this bill rectifies this. Mr. Kane outlined the requirements for being a bail enforcement agent and the penalties for not complying. He stated bail enforcement agents must carry identification and a badge. They must also notify law enforcement when a planned apprehension is scheduled. The bill also cleans up language as it relates to bail agents. In answer to questions from the Committee, Mr. Kane explained how the bill has been changed to make it more palatable to all the stakeholders. He stated this proposed law would also apply to bail enforcement agents entering the state.
- MOTION:** **Rep. Gannon** made a motion to send **S 1110aa** to the floor with a **DO PASS** recommendation.
- In answer to questions from the Committee, **Mr. Kane** stated bail enforcement agents don't have to carry a weapon, but can if they choose to do so. If they do, they must be in compliance with state and Federal laws.
- Sheriff Kieran Donahue**, Canyon County Sheriff spoke **in support** of **S 1110aa**. He shared examples of incidents involving bounty hunters that ended tragically. He stated this bill is a good collaboration of all stakeholders.
- Melinda Merrill**, on behalf of Triton Management / Aladdin Bail Bonds and Idaho Bail Coalition, spoke **in support** of **S 1110aa**. She stated Aladdin has a strong presence in Idaho and their agents receive training.
- Jesse Taylor**, American Bail Coalition, yielded to a question from the Committee. He explained extrications by out of state bail enforcement agents are handled by contacting an Idaho based bail agent who fills out the required forms such as requests for affidavits and arrest warrants.
- VOTE ON MOTION:** **Chairman Dayley** called for a vote on the motion to send **S 1110aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Troy** will sponsor the bill on the floor.
- ADJOURN:** There being further business to come before the committee. The meeting adjourned at 2:43 p.m.

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Representative Dayley  
Chair

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Wendy Carver-Herbert  
Secretary

THE STATE OF IDAHO  
SUPREME COURT



SARA B. THOMAS  
ADMINISTRATIVE DIRECTOR  
OF THE COURTS

451 W. STATE STREET  
P.O. BOX 83720-0101  
BOISE, IDAHO 83720-0101  
(208) 334-2246  
FAX (208) 334-2146  
EMAIL: sthomas@idcourts.net

March 14, 2019

President Pro Tem Brent Hill  
Idaho Legislature  
STATEHOUSE MAIL

Speaker of the House Scott Bedke  
Idaho Legislature  
STATEHOUSE MAIL

Chief Justice Roger Burdick  
Idaho Supreme Court

Re: SB 1146 (2019) and future amendments to I.C. §59-502

Dear Mr. Pro Tem Hill, Mr. Speaker Bedke, and Chief Justice Burdick,

In order to change judicial compensation, Idaho Code §59-502, Salaries of Judges, must be amended by the Legislature. For the 2019 Legislative Session it was agreed by Legislative Leadership that a Judicial CEC proposal would be negotiated by the respective Chairman of the germane committees, Chairman Lakey and Chairman Dayley, and be heard in the respective Committees. Such an agreement was negotiated which is consistent with JFAC's CEC proposal for all other state employees, and the legislation reflecting this agreement is printed as SB 1146.

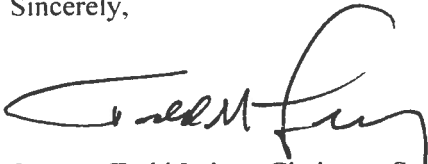
The Chairmen requested this letter of intention and willingness to discuss the "*ad hoc*" manner of when and how Judicial CEC is considered, as well as a general discussion regarding the impacts of judicial pay on the Judges' Retirement Fund (JRF), which discussions would occur between the Chairmen and representatives of the Court prior to the 2020 Legislative Session. This intention and willingness is consistent with the history of cooperation and collaboration between the two branches on these subjects.

The topics we agree to discuss are:

- Whether Judicial CEC should be consistent in timing or frequency with other state employee CEC; or should some other method be explored.
- The impact of Judicial CEC on the funding and related actuarial status of the JRF.

- The impact of the Plan B senior judge program on the JRF.
- The actuarial status of the JRF.
- In light of changing demographics being experienced in the state, the number and location of judges throughout the state.
- Recruitment and retention history of judges in order to promote the mandates of the Idaho Constitution and related statutes.
- All parties recognize other issues for discussion may arise.
- Following the 2019 session and before the 2020 session, the Administrative Director will initiate regular meetings, at least quarterly, in order to facilitate meaningful exchanges of information.

Sincerely,



Senator Todd Lakey, Chairman Senate Judiciary and Rules Committee



Representative Tom Dayley, Chairman House Judiciary, Rules and Administration Committee



Sara Thomas, Administrative Director of the Courts

AGENDA  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
1:30 pm OR Upon Adjournment  
Room EW42  
Thursday, March 21, 2019

| SUBJECT              | DESCRIPTION                                                                   | PRESENTER                                                                 |
|----------------------|-------------------------------------------------------------------------------|---------------------------------------------------------------------------|
| <a href="#">HR 5</a> | House Rules / Reordering                                                      | Representative Moyle<br>and Carrie Maulin,<br>Chief Clerk of the<br>House |
|                      | Review of Joint Print Committee Report                                        | Carrie Maulin                                                             |
|                      | Review of Idaho Sheriff's Association Report /<br>County Jails / IDOC Inmates | Representative Dayley                                                     |

***If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

|                      |              |               |
|----------------------|--------------|---------------|
| Chairman Dayley      | Rep Ehardt   | Rep Troy      |
| Vice Chairman Chaney | Rep Scott    | Rep Young     |
| Rep Kerby            | Rep Goesling | Rep Gannon    |
| Rep Amador           | Rep Hartgen  | Rep McCrostie |
| Rep Zito             | Rep Marshall | Rep Wintrow   |
| Rep Zollinger        | Rep Ricks    | Rep Davis     |

COMMITTEE SECRETARY

Wendy Carver-Herbert  
Room: EW56  
Phone: 332-1127  
email: [hjud@house.idaho.gov](mailto:hjud@house.idaho.gov)

MINUTES

## HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

**DATE:** Thursday, March 21, 2019  
**TIME:** 1:30 pm OR Upon Adjournment  
**PLACE:** Room EW42  
**MEMBERS:** Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis  
**ABSENT/EXCUSED:** Representatives Zito, Scott, Ricks, Wintrow  
**GUESTS:** None

**Chairman Dayley** called the meeting to order at 1:32 p.m.

**Chairman Dayley** explained the attachment for the March 19, 2019 meeting minutes. It regards compensation for judges.

**MOTION:** **Rep. Marshall** made a motion to approve the minutes of February 13, 2019, February 25, 2019, March 11, 2019, March 13, 2019, March 15, 2019 and March 19, 2019. **Motion carried by voice vote.**

**HR 5:** **Carrie Maulin**, Chief Clerk, Idaho House of Representatives, presented **HR 5**. Ms. Maulin explained this bill does not change any verbiage in the rules. With the exception of minor clerical changes, the rules are the same as they are today. Only the rule numbers and order in which they appear were changed. The rules have been grouped by contiguous topics. She explained the addition of a new Rule 66, which incorporates the language regarding public information requests. This language was separated out from current Rule 64 because the Chief Clerk does not have any responsibility for public information requests. In answer to questions from the Committee, Ms. Maulin stated the rules were organized based on the order of how a legislator might use the rules. She explained masculine pronouns are used because it is consistent with the language used in legal documents. She clarified the fiscal note by stating the cost of the changes will be covered by the Legislative account and will not require additional funds.

**MOTION:** **Rep. Chaney** made a motion to send **HR 5** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Moyle** will sponsor the bill on the floor.

**Carrie Maulin**, Chief Clerk, Idaho House of Representatives, presented the **Joint Printing Committee Report for 2019** for the Committee's review (Attachment 1). She provided a history of how Session Laws have been printed and provided an overview of the Committee's membership. In 2018, the Legislature voted to limit the number of volumes printed to 150. The Session Laws are available on the Legislative website. The 2019 Joint Printing Committee Report endorses maintaining the 150 cap on printing and allows for the continued work to digitize historic volumes of Idaho Session Laws. She stated people can request a copy of Session Laws on a first come, first served basis, but agencies pay for their own sets. In answer to a questions from the Committee, Ms. Maulin stated legislators, agencies and law libraries are prioritized first. She also explained the number of requests for printed volumes did reach the cap in 2016.

**MOTION:** **Rep. Chaney** made a motion to send the **Joint Printing Committee Report for 2019** to the floor with a recommendation it be **ADOPTED**. **Motion carried by voice vote.** **Chairman Dayley** will sponsor this on the floor.

**Chairman Dayley** stated **S 1045** is not on the agenda as originally planned because a resolution was not reached on outstanding issues.

**Chairman Dayley** explained the Idaho Sheriff's Association Report. This provides a review of the costs of housing Idaho Department of Corrections inmates in county jails (Attachment 2). This triennial report is required by statute.

**ADJOURN:** There being no further business to come before the Committee, the meeting adjourned at 2:01 p.m.

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Representative Dayley  
Chair

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Wendy Carver-Herbert  
Secretary





**House of Representatives**  
**STATE OF IDAHO**  
**CAPITOL BUILDING**  
P.O. BOX 83720  
BOISE, ID 83720-0038

March 18, 2019

To: House Judiciary, Rules, and Administration Committee  
Senate Judiciary and Rules Committee

Pursuant to Idaho Code Section 67-509

The Joint Printing Committee recommends the continued endorsement of limiting the printing of the Idaho Session Laws to a total of 150 volumes per session, given the accessibility and decrease in expenditures associated with online access. The Committee also acknowledges there will be a significant decrease in legislative expenditures from the 2018 publishing price of \$4,682 as state agencies are required to cover the cost of the volumes they order.

The Joint Printing Committee also requests that the Secretary of the Senate and the Chief Clerk of the House of Representatives be allotted time by their respective presiding officers to continue the process of scanning, reviewing, and uploading historic volumes of Idaho Session Laws to the legislative website during the next two legislative interims.

The Joint Printing Committee

/s/ Representatives Dayley and Gannon

/s/ Senators Lakey and Burgoyne

/s/ Chief Clerk Maulin

/s/ Secretary Novak

cc: Speaker Bedke  
President Pro Tem Hill



# Idaho Statutes

Idaho Statutes are updated to the web July 1 following the legislative session.

## TITLE 67

### STATE GOVERNMENT AND STATE AFFAIRS

#### CHAPTER 5

##### ENACTMENT AND OPERATION OF LAWS

67-509. PUBLICATION OF LEGISLATIVE JOURNALS AND SESSION LAWS – DISTRIBUTION AND REPORT. (1) On the first legislative day or as soon thereafter as the speaker shall have been elected, it shall be the duty of the president of the senate and the speaker of the house of representatives each to appoint a printing committee for his body whose duties shall be, in addition to its duties prescribed by the rules of said bodies respectively, to immediately meet in joint session and to provide for the publication of the journals of the two (2) houses of the legislature. Said committee shall determine the form of the journals to be used, the size of the type, the number to be distributed to each member of the legislature and the method of distribution, the number of journals to be made available for sale through the secretary of state's office, and the manner in which the journals are to be bound for the permanent copies of the journal. All costs incurred in publishing the journals shall be a proper charge against the legislative fund, unless an appropriation for such purpose has been made.

(2) The joint printing committee of the senate and house of representatives shall exist to print, publish, and distribute the session laws. The joint printing committee will consist of the printing committees of each house. The chairmen of the respective judiciary and rules committees, or their designee, will chair their house's printing committee and cochair the joint printing committee.

(3) Prior to the final adjournment of a regular legislative session, the joint printing committee must meet and determine the proper method of printing and preserving the session laws of that legislative session. The joint printing committee must give consideration to the cost, accessibility, and preservation of the session laws. The joint printing committee will provide sufficient physical copies of session laws.

(4) The published session laws must include the bills, concurrent resolutions, joint resolutions, petitions and memorials enacted or adopted during the legislative session. In addition, the session laws must include amendments to the constitution adopted at the preceding general election, and bills, concurrent resolutions, joint resolutions, and memorials enacted or adopted during an intervening extraordinary session of the legislature. The published session laws must include a title page, a table of contents, certificate pages, tables of amended and repealed statutes, an index of contents, and a list of each member of the senate and house of representatives.

(5) Prior to the final adjournment of a regular legislative session, the printing committee of each house must meet jointly to consider the proper method to print and preserve the session laws. The joint printing committee will prepare a brief written report of its recommendations, which written report must be delivered to the judiciary and rules committees of the senate and the house of representatives. The written report must include the projected cost to

implement its recommendation, together with a distribution list of persons that will be provided printed volume(s) of the session laws. If the written or amended report is rejected by the legislature by concurrent resolution, the joint printing committee will meet to reconsider its recommendations. If the written or amended report is not rejected, the joint printing committee will enter into an agreement(s) that is substantially consistent with its written or amended report to print, publish, and deliver the session laws, which costs will be paid from the legislative account.

History:

[(67-509) 1907, p. 327, sec. 1; am. R.C., sec. 70; reen. C.L., sec. 70; C.S., sec. 112; am. 1921, ch. 5, sec. 1, p. 6; am. 1931, ch. 8, sec. 1, p. 12; I.C.A., sec. 65-509; am. 1935, ch. 43, sec. 3, p. 79; am. 1965, ch. 17, sec. 1, p. 29; am. 1971, ch. 19, sec. 1, p. 33; am. 1977, ch. 232, sec. 1, p. 687; am. 2018, ch. 236, sec. 3, p. 555.]

How current is this law?

**Search the Idaho Statutes and Constitution**

LEGISLATURE OF THE STATE OF IDAHO  
Sixty-fourth Legislature Second Regular Session - 2018

IN THE SENATE

SENATE CONCURRENT RESOLUTION NO. 148

BY JUDICIARY AND RULES COMMITTEE

A CONCURRENT RESOLUTION

ENDORSING THE LIMITATION OF PRINTING OF THE IDAHO SESSION LAWS TO A TOTAL OF  
150 COPIES GIVEN THE ACCESSIBILITY AND DECREASE IN EXPENDITURES ASSOCI-  
ATED WITH ONLINE ACCESS TO THE IDAHO SESSION LAWS.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, Section 67-904, Idaho Code, provides for the publication and  
distribution of the Idaho Session Laws; and

WHEREAS, the Senate and the House of Representatives are working to im-  
prove online access to past Idaho Session Laws; and

WHEREAS, the Joint Publishing Committee has considered the accessibil-  
ity and decrease in expenditures associated with online access to the Idaho  
Session Laws in its determination to preserve limited availability of physi-  
cal copies of the Idaho Session Laws.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Ses-  
sion of the Sixty-fourth Idaho Legislature, the Senate and the House of Rep-  
resentatives concurring therein, that beginning with the First Regular Ses-  
sion of the Sixty-fifth Idaho Legislature, given the accessibility and de-  
crease in expenditures associated with online access to the Idaho Session  
Laws, we endorse limiting printing of the Idaho Session Laws to a total of 150  
copies to be distributed based on online requests for physical copies.



126 11th Ave North | Nampa, Idaho 83687  
Office: (208) 468-0111 | www.customprintingink.com

# Invoice

| DATE      | INVOICE # |
|-----------|-----------|
| 9/28/2018 | 186304    |

## BILL TO

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Research & Legislation  
P. O. Box 83720  
Boise, ID 83720-0054

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Boise, ID 83720-0054

| CUST P.O. # | OUR P.O. # | SHIP VIA  | FRANK # | TERMS  | ACCOUNT # |
|-------------|------------|-----------|---------|--------|-----------|
|             | 82905      | Our Truck |         | Net 15 | R         |

| QTY | DESCRIPTION                                       | AMOUNT   |
|-----|---------------------------------------------------|----------|
| 310 | Books Session Law Books 2018 (155 ea of 2)        | 4,261.00 |
| 1   | Shipping/Freight/Postage                          | 502.00   |
|     | Discount/Credit/Coupon (3 orders billed directly) | -81.00   |

Invoices are due and payable in 30 days following date of invoice. A finance charge of 1.5% per month or 18% per year will be charged to past due accounts.

**TOTAL** \$4,682.00

## Session Laws Printing Costs

|      | <u># copies</u> | <u>\$</u><br><u>per page</u> | <u>\$</u><br><u>per bind</u> | <u># pages</u> | <u>\$</u><br><u>House</u><br>60% | <u>\$</u><br><u>Senate</u><br>40% | <u>\$</u><br><u>Total</u> |
|------|-----------------|------------------------------|------------------------------|----------------|----------------------------------|-----------------------------------|---------------------------|
| 2000 | 1200            |                              |                              |                | \$36,456.15                      |                                   |                           |
| 2003 | 800             | \$19.10                      |                              |                | \$19,956.96                      |                                   |                           |
| 2004 | 800             | \$19.10                      |                              |                | \$21,859.32                      |                                   |                           |
| 2005 | 800             | \$19.10                      | \$9.50                       |                | \$23,403.90                      |                                   |                           |
| 2006 | 800             | \$19.10                      | \$9.50                       |                | \$23,693.22                      |                                   |                           |
| 2007 | 604             | \$17.45                      | \$9.75                       | 1409           | \$21,923.73                      | \$14,775.82                       | \$36,559.55               |
| 2008 | 626             | \$17.45                      | \$9.75                       | 1337           | \$21,322.59                      | \$14,215.06                       | \$35,537.65               |
| 2009 | 626             | \$17.45                      | \$9.75                       | 1252           | \$20,432.64                      | \$13,621.76                       | \$34,054.40               |
| 2010 | 565             | \$17.15                      | \$10.00                      | 1106           | \$18,160.20                      | \$12,107.16                       | \$30,267.90               |
| 2011 | 505             | \$16.85                      | \$10.75                      | 1150           | \$19,048.05                      | \$11,186.95                       | \$30,235.00               |
| 2012 |                 |                              | \$10.75                      | 1112           | 18,913.73                        | 11,108.06                         | 30,021.79                 |

|          |        |
|----------|--------|
| 2015     | 22,432 |
| 2016     | 15,095 |
| 2018 150 | 4,682  |

| Session Laws Distribution list 2017         |                                                                                                                           |      |      |      |      |
|---------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|------|------|------|------|
| Name/Agency                                 | Contacts                                                                                                                  | 2015 | 2016 | 2017 | 2018 |
| Ada County                                  | Chelsea Carattini<br>200 W Front , First Floor County Building<br>Boise, ID 83702-7300                                    | 5    | 3    | 3    | 3    |
| Ada County Coroner's Office                 | Dotti Owens<br>5550 Morris Hill Road<br>Boise, ID 83706                                                                   | 5    | 3    | 3    | 1    |
| Adams County                                | Sherry Ward, Clerk<br>PO Box 48<br>201 Industrial Avenue<br>Council, ID 83612-0048                                        | 1    |      |      |      |
| Administration, Department of               | Diane Blume<br>PO Box 83720<br>LBJ Building Room 100<br>Boise, ID 83720-0003                                              | 1    | 1    |      |      |
| Aging, Idaho Office on                      | Jessica Valerio<br>PO Box 83720<br>Boise, ID 83720-0007                                                                   | 1    |      |      |      |
| Agriculture, Idaho State Dept of            | Janis Perry<br>PO Box 790<br>Boise, ID 83701<br>208-332-8509                                                              | 5    | 2    | 3    | 3    |
| Attorney General, Office of                 | Trudy Jackson<br>700 W. State St. 2nd floor<br>Boise Idaho, 83720<br>trudy.jackson@ag.idaho.gov<br>(208) 334-4524         | 18   | 5    | 10   | 10   |
| Bannock County                              | Robert Polekl<br>624 E Center RM211<br>Bannock County Courthouse<br>Pocatello, ID 83201-6274                              | 10   |      |      |      |
| Bear Lake County                            | Cindy Garner<br>7 East Center<br>PO Box 190<br>Paris, ID 83261-0190                                                       | 1    |      |      |      |
| Benewah County                              | Deanna Bramblett<br>701 W College Ave<br>Benwah County Courthouse<br>St Maries, ID 83861-1852                             | 2    |      |      |      |
| Bingham County                              | Pam Wray Eckhardt, Clerk<br>501 N Maple, Room 205<br>Bingham County Courthouse<br>Blackfoot, ID 83221-1700                | 3    |      |      |      |
| Blaine County                               | Jolynn Drage, Clerk<br>206 First Ave, STE 200<br>Blaine County Courthouse<br>Halley, ID 83333-8429                        | 12   |      |      |      |
| Boise County                                | Mary Prisco, Clerk<br>PO Box 1300<br>Boise County County Courthouse<br>Idaho City, ID 83631-0900                          | 1    |      |      |      |
| Boise Public Library                        | Jody Vestal, Reference<br>715 S Capitol BLVD<br>Boise Public Library<br>Boise, ID 83702                                   | 1    | 1    | 1    |      |
| Boise State University/Albertsons Library   | Sandra Loera<br>Boise State University/Albertsons Library<br>1910 University Drive<br>P.O. Box 46<br>Boise, ID 83707-0046 | 1    | 1    | 1    |      |
| Bonner County                               | Michael Rosedale<br>215 S First Avenue<br>Bonner County Courthouse<br>Sandpoint, ID 83864-1392                            | 3    |      |      |      |
| Bonneville County                           | Daniel D. Byron<br>605 N Capital Ave<br>Bonneville County Courthouse<br>Idaho Falls, ID 83402-3582                        | 7    |      |      |      |
| Boundary County                             | Glenda Poston, Clerk<br>PO Box 419<br>6452 Kootenai<br>Boundary County<br>Bonners Ferry, ID 83805-0419                    | 2    |      |      |      |
| Buhl West End Cemetary Maintenance District | Michelle Pato<br>P.O. Box 63<br>Buhl, Idaho 83316<br>westendcemetary@gmail.com<br>208-543-4251                            |      |      | 1    | 1    |
| Building Safety, Division of                | Patrick Grace<br>1090 E Watertower St., Suite 150<br>Meridian, ID 83642                                                   | 1    |      | 1    | 1    |
| Butte County                                | Shelly Shaffer, Clerk<br>248 W Grand Avenue<br>Butte County Courthouse<br>Arco, ID 83213-0737                             | 6    |      |      |      |
| Camas County                                | Korri Blodgett, Clerk<br>PO Box 430<br>501 Soldier Rd<br>Fairfield, ID 83327-0430                                         | 4    |      |      |      |
| Canyon County                               | Taryn White<br>1115 Albany St, Room 246<br>Canyon County Courthouse<br>Caldwell, ID 83605-3522                            | 16   |      |      |      |
| Canyon County Prosecuting Attorney          | Linda Landis<br>1115 Albany St.<br>Caldwell, ID 83605-3522                                                                |      |      | 2    | 2    |
| Caribou County                              | Denise Horsley, Clerk<br>Caribou County<br>PO Box 775<br>County Courthouse<br>Soda Springs, ID 83276-0775                 | 4    |      |      |      |

|                                             |                                                                                                                            |    |   |   |   |
|---------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|----|---|---|---|
| Cassia County                               | Joseph Larsen, Clerk<br>1459 Overland Ave<br>Cassia County Courthouse<br>Burley, ID 83318-1862                             | 2  |   |   |   |
| City of Lewiston                            | Joel Plaskon<br>PO Box 617<br>Lewiston, ID 83501                                                                           |    |   |   | 1 |
| Clark County                                | Kerri Ellis, Clerk<br>PO Box 205<br>Clark County Courthouse<br>Dubois, ID 83423-0205                                       | 1  |   |   |   |
| Clearwater County, Orofino                  | Carrie Bird, Clerk<br>150 Michigan Ave<br>PO Box 586<br>Orofino, ID 83544-0586                                             | 6  | 1 | 1 |   |
| Clearwater Memorial Public Library, Orofino | Clearwater Memorial Public Library<br>PO Box 471<br>Orofino, ID 83544                                                      | 0  | 1 | 1 |   |
| College of Southern Idaho                   | Lucy Falt<br>315 Falls Ave<br>PO Box 1238<br>Twin Falls, ID 83303-1238                                                     | 1  | 1 |   |   |
| College of Southern Idaho Library           | Library Serials<br>P.O Box 1238<br>Twin Falls, ID 83303                                                                    |    | 1 | 1 |   |
| Controller, Office of the State             | Amber Duke<br>700 W. State St.<br>JR Williams Bldg, 5th floor<br>Boise, ID 83720-0011                                      | 7  | 5 | 5 | 4 |
| Correction Dept, Legal Division             | Andrea Blades<br>1299 N Orchard Ste 110<br>Boise, ID 83706                                                                 | 1  |   |   |   |
| Correctional Industries                     | Martin Thomas<br>1301 N Orchard, STE 110<br>Boise, ID 83706-2266                                                           | 1  |   |   |   |
| Custer County                               | Laura Baker<br>PO Box 385<br>801 Main st<br>Challis, ID 83226-0385                                                         | 4  |   |   |   |
| Dennis Dougherty                            | Lexis-Nexis<br>701 East Water St.<br>Charlottesville, VA 22902                                                             | 1  | 1 | 1 | 1 |
| Dentistry, Idaho Board of                   | Susan Miller<br>350 N Ninth, STE M100<br>Statehouse Mail<br>susan.miller@isbd.idaho.gov<br>Boise, ID 83702<br>208-334-2369 | 1  | 1 | 1 | 1 |
| Department of Correction, Central Records   | Carolee Kelly<br>1299 N Orchard, STE 110<br>Boise, ID 83706                                                                | 1  |   |   |   |
| Disaster Services                           | Brad Hufford<br>4040 Guard St #600<br>Statehouse Mail<br>Boise, ID 83705-5004                                              | 1  |   |   |   |
| Education, Idaho State Board of             | Jennifer Marcus<br>650 W State St Ste. 307<br>Boise, Idaho 83702<br>208-332-1570 Ext 321570                                | 1  | 1 | 1 | 1 |
| Education, Idaho State Board of             | Matt Freeman<br>650 W State St Ste. 307<br>Boise, Idaho 83702<br>matt.freeman@osbe.idaho.gov<br>208-332-1570 Ext 321570    | 1  | 1 | 1 | 1 |
| Education, State Department of              | Duncan Robb<br>650 W State Street<br>2nd Floor<br>Boise, ID 83720                                                          | 3  | 1 | 1 |   |
| Elmore County                               | Barbara Steele<br>150 S 4th E Sulte #3<br>Elmore County Courthouse<br>Mountain Home, ID 83647-3000                         | 1  |   |   |   |
| Engineers & Land Surveyors, Board of        | David L. Curtis, Exec Dlr<br>1510 E Watertower St #110<br>Meridian, ID 83720-0027                                          | 1  |   |   |   |
| Environmental Quality, Division of          | Rosie Alonzo<br>1410 N Hilton<br>Boise, ID 83706-1255                                                                      | 3  |   |   |   |
| Ficker, James A.                            | James Ficker<br>1414 Airway Ave.<br>Lewiston, ID 83501                                                                     |    |   |   | 1 |
| Finance, Dept of                            | Rita Jensen<br>700 W State- 2nd Floor<br>PO Box 83720<br>Boise, ID 83720-0031                                              | 1  |   |   |   |
| Financial Management, Idaho Division of     | Yvonne Cendejas<br>304 N Eighth St, Ste 325<br>PO Box 83720<br>Boise, ID 83720-0032                                        | 10 | 2 | 2 |   |
| Fish and Game Department of (Lewiston)      | Mark Hill, RCO<br>3316 Sixteenth St<br>Lewiston, Id 83501                                                                  | 1  |   |   |   |
| Fish and Game, Department of (Legal)        | Dallas Burkhalter<br>PO Box 25<br>Boise, ID 83707                                                                          | 1  | 1 | 1 |   |
| Franklin County                             | Shauna Geddes, Clerk<br>39 W Oneida<br>Franklin County Courthouse<br>Preston, ID 83263-1232                                | 7  |   |   |   |
| Fremont County                              | Abbie Mace<br>151 W First N#12<br>Fremont County Courthouse<br>St Anthony, ID 83445-2548                                   | 1  |   |   |   |



|                                          |                                                                                                   |   |   |   |   |
|------------------------------------------|---------------------------------------------------------------------------------------------------|---|---|---|---|
| Health Districts, South Eastern          | Terry Cameron<br>1901 Alvin Ricken Dr<br>Pocatello, ID 83201                                      | 1 |   |   |   |
| Highway Districts, Idaho Association of  | Laura Lantz<br>3100 Vista Avenue Ste. 202<br>Boise, Idaho 83705<br>laura@iahd.com<br>208-345-5716 | 0 | 1 | 1 | 1 |
| Historical Society, Library and Archives | Linda Morton-Keithley<br>2205 Old Penitentiary Rd<br>Boise, ID 83712                              | 1 |   |   |   |
| Hawley Troxell                           | Attn. Alison Perry<br>877 W. Main St., Ste. 1000<br>Boise, ID 83702                               |   |   | 1 | 1 |
| Hon. Paulette Jordan                     | 945 Q Street<br>Plummer, ID 83851                                                                 | 1 |   |   |   |
| Hon. Abby Lee                            | 5370 Elmore Rd<br>Fruitland, ID 83619                                                             | 1 |   |   |   |
| Hon. Bart M. Davis                       | 2638 S. Bellin Circle<br>Idaho Falls, ID 83402                                                    | 1 | 1 | 1 |   |
| Hon. Bert Brackett                       | Flat Creek Ranch<br>Rogerson, ID 83302                                                            | 1 |   |   |   |
| Hon. Bob Nonini                          | 5875 W Harbor Drive<br>Coeur D'Alene, ID 83814                                                    | 1 |   |   |   |
| Hon. Brad Little                         | PO Box 488<br>Emmett, ID 83617                                                                    | 1 | 1 | 1 | 1 |
| Hon. Brent Crane                         | PO Box 86<br>Nampa, ID 83653                                                                      | 1 |   |   |   |
| Hon. Brent Hill                          | 1010 South Second East<br>Rexburg, ID 83440                                                       | 1 |   |   |   |
| Hon. Caroline Troy                       | 2794 Highway 95<br>Genesee, ID 83832                                                              | 1 |   |   |   |
| Hon. Cherie Buckner-Webb                 | 2304 W Bella St<br>Boise, ID 83702                                                                | 1 |   |   |   |
| Hon. Chuck Winder                        | 3328 N Ebbetts Avenue<br>Boise, ID 83713                                                          | 1 |   |   |   |
| Hon. Dan Johnson                         | Via Hand Delivery                                                                                 | 1 | 1 | 1 | 1 |
| Hon. Dan Rudolph                         | 3211 4th Street<br>Lewiston, ID 83501                                                             | 1 |   |   |   |
| Hon. Dell Raybould                       | 3215 North 2000 West<br>Rexburg, ID 83440                                                         | 1 |   |   |   |
| Hon. Don Chetham                         | PO Box 2011<br>Post Falls, ID 83877                                                               | 1 |   |   |   |
| Hon. Elaine Smith                        | 3759 Heron Avenue<br>Pocatello, ID 83201                                                          | 1 |   |   |   |
| Hon. Eric Redman                         | N. 35430 Kelso Drive<br>Spirit Lake, ID 83869                                                     | 1 |   |   |   |
| Hon. Fred S. Martin                      | 3672 N Tumbleweed Place<br>Boise, ID 83713                                                        | 1 |   |   |   |
| Hon. Grant Burgoyne                      | 2203 Mountain View Drive<br>Boise, ID 83706                                                       | 1 |   | 1 | 1 |
| Hon. Greg Chaney                         | 11968 Colonial Drive<br>Caldwell, ID 83605                                                        | 1 |   |   |   |
| Hon. Heather Scott                       | 27091 Highway 41<br>Blanchard, ID 83804                                                           | 1 |   |   |   |
| Hon. Jason Monks                         | 1002 W Washington Drive<br>Meridian, ID 83642                                                     | 1 |   |   |   |
| Hon. Jeff Thompson                       | 1739 Peggys Lane<br>Idaho Falls, ID 83402                                                         | 1 |   | 1 | 1 |
| Hon. Jim Guthrie                         | 425 W Goodenough<br>Mccammon, ID 83250                                                            | 1 |   |   |   |
| Hon. Jim Patrick                         | 2231 East 3200 North<br>Twin Falls, ID 83301                                                      | 1 |   |   |   |
| Hon. John Mccroastle                     | 7820 W Riverside Drive<br>Garden City, ID 83714                                                   | 1 |   |   |   |
| Hon. Judy Boyle                          | PO Box 57<br>Midvale, ID 83645                                                                    | 1 |   |   |   |
| Hon. Kathleen Sims                       | PO Box 399<br>Coeur D'Alene, ID 83816-0399                                                        | 1 |   |   |   |
| Hon. Ken Andrus                          | 6948 E old Oregon Trail Road<br>Lava Hot Springs, ID 83246                                        | 1 |   |   |   |
| Hon. Lee Helder                          | 1631 Richmond Drive<br>Twin Falls, ID 83301                                                       | 1 |   |   |   |
| Hon. Lori Den Hartog                     | 5864 W. Guido Lane<br>Nampa, Id 83687                                                             | 1 |   |   |   |
| Hon. Lynn M Luker                        | 514 El Blanco Drive<br>Boise, ID 83709                                                            | 1 |   |   |   |
| Hon. Mark Nye                            | 173 South 15th Avenue<br>Pocatello, ID 83210                                                      | 1 |   |   |   |
| Hon. Mary Souza                          | 4153 W. Fairway Drive<br>Coeur D'Alene, ID 83815                                                  | 1 |   |   |   |
| Hon. Mat Erpelding                       | 2519 W Idaho Street<br>Boise, ID 83702                                                            | 1 |   |   |   |
| Hon. Maxine T. Bell                      | 194 South 300 East<br>Jerome, ID 83338                                                            | 1 |   |   |   |
| Hon. Melissa Wintrow                     | 1711 Ridenbaugh<br>Boise, ID 83702                                                                | 1 |   |   |   |
| Hon. Merrill Beyeler                     | 4861 Lemhi Rd<br>Leadore, ID 83464                                                                | 1 |   |   |   |
| Hon. Michelle Stennett                   | PO Box 475<br>Ketchum, ID 83340                                                                   | 1 |   |   |   |
| Hon. Mike Moyle                          | 480 N Plummer Road<br>Star, Id 83669                                                              | 1 |   |   |   |
| Hon. Neil Anderson                       | 71 South 700 West<br>Blackfoot, ID 83221                                                          | 1 |   |   |   |
| Hon. Patti Anne Lodge                    | P.O. Box 96<br>Huston, ID 83630                                                                   | 1 | 1 | 1 | 1 |
| Hon. Paul E. Shepherd                    | PO Box 277<br>Riggins, ID 83549                                                                   | 1 |   |   |   |
| Hon. Paul Romrell                        | 512 Park Street<br>St Anthony, ID 83445                                                           | 1 |   |   |   |

|                                         |                                                                                         |   |   |   |   |
|-----------------------------------------|-----------------------------------------------------------------------------------------|---|---|---|---|
| Gem County                              | Shelly Tilton, Clerk<br>415 E Main St<br>Gem County Courthouse<br>Emmett, ID 83617-3096 | 2 |   |   |   |
| Gooding County                          | Denise Gill, Clerk<br>PO Box 417<br>624 Main St<br>Gooding, ID 83330-0417               | 5 |   |   |   |
| Governor, Office of the                 | Chief Of Staff<br>Statehouse Mail<br>Boise, ID 83720-0034                               | 2 | 1 |   |   |
| Greener Burke Showmaker Oberrecht, P.A. | Attn. Catherine Houts<br>950 W. Bannock St., Ste. 950<br>Boise, ID 83702                |   |   | 1 | 1 |
| Health & Welfare, Department of         | Sue Hill<br>450 W State St- 9th Floor<br>Statehouse Mail<br>Boise, ID 83720-0036        | 7 | 4 | 4 | 4 |
| Health Districts, Central               | Rob Howarth<br>707 N Armstrong PL<br>Boise, ID 83704-0825                               | 1 |   |   |   |
| Health Districts, North Central         | Ethel Bardwell, Mgt Asst<br>215 10th Street<br>Lewiston, ID 83501-1987                  | 1 |   |   |   |

|                                            |                                                                                                            |     |   |    |   |
|--------------------------------------------|------------------------------------------------------------------------------------------------------------|-----|---|----|---|
| Hon. Pete Neilsen                          | 4303 SW Easy Street<br>Mountain Home, ID 83647                                                             | 1   |   |    |   |
| Hon. Phyllis K. King                       | 2107 Palouse<br>Boise, ID 83705                                                                            | 1   |   |    |   |
| Hon. R Steven Bair                         | 947 West 200 South<br>Blackfoot, ID 83221                                                                  | 1   |   |    |   |
| Hon. Ronald Nate                           | 2139 Ferris Lane<br>Rexburg, ID 83440                                                                      | 1   |   |    |   |
| Hon. Ryan Kerby                            | 5470 Highway 52<br>New Plymouth, ID 83655                                                                  | 1   |   |    |   |
| Hon. Sage Dixon                            | 650 A Street<br>Sandpoint, ID 83864                                                                        | 1   |   |    |   |
| Hon. Shawn A. Keough                       | P.O. Box 101<br>Sandpoint, ID 83864                                                                        | 1   | 1 | 1  | 1 |
| Hon. Steve Vick                            | 2140 E Hanley Avenue<br>Dalton Gardens, id 83815                                                           | 1   |   |    |   |
| Hon. Sue Chew                              | 1304 Lincoln Avenue<br>Boise, ID 83706                                                                     | 1   |   |    |   |
| Hon. Thomas Dayley                         | 4892 S Willandra Way<br>Boise, ID 83709                                                                    | 1   |   |    |   |
| Hon. Tom Loertscher                        | 1357 Bone Road<br>Iona, ID 83427                                                                           | 1   |   |    |   |
| Hon. Van Burtenshaw                        | 1329 E 1500 N<br>Terreton, ID 83709                                                                        | 1   |   |    |   |
| Hon. Vito Barbieri                         | 564 E Prairie Avenue<br>Dalton Gardens, Id 83815                                                           | 1   |   |    |   |
| Human Resources, Idaho Division of         | Susan E. Buxton<br>304 N. 8th St.<br>Boise, ID 83720<br>kylie.falk@dhr.idaho.gov<br>208-854-3074           | 1   | 1 | 1  |   |
| Human Rights, Commission on                | Robert Adelson<br>1109 Main St, STE 400<br>Statehouse Mail<br>Boise, ID 83720-0040                         | 1   |   |    |   |
| Idaho Association of Counties              | Dan Chadwick<br>3100 S. Vista Avenue STE 200<br>Boise, ID 83705-0081                                       | 1   | 1 | 1  |   |
| Idaho Casa                                 | Natasha Lattin<br>P.O. Box 4727<br>Pocatello, ID 83201                                                     |     |   |    | 1 |
| Idaho Cities, Association of               | Ken Harward<br>3100 Vista Avenue STE 310<br>Boise, ID 83705                                                | 1   |   |    |   |
| Idaho County                               | Kathy Ackerman, Clerk<br>320 W Main, Rm 5<br>Idaho County Courthouse<br>Grangeville, ID 83530-1948         | 3   |   |    |   |
| Idaho Industrial Commission                | Nick Landry<br>700 S Clearwater Lane<br>Boise, Idaho 83712<br>nick.landry@lic.idaho.gov<br>208-334-6042    | 1   |   | 2  | 5 |
| Idaho Public Utilities Commission          | Diane Holt, Commission Secretary<br>472 W. Washington<br>Statehouse Mail<br>Boise, ID 83720-0074           | 0   | 1 | 1  |   |
| Idaho Secretary of State                   | Lisa Mason<br>700 W Jefferson Room 203<br>Statehouse Mail<br>Boise, ID 83720-0080                          | 4   | 4 | 3  | 3 |
| Idaho State Board of Education             | Janie Potter<br>650 W. State street<br>Boise, ID 83720                                                     | 0   | 1 |    |   |
| Idaho Law Library (Includes Supreme Court) | Attn. Rhonda Willoughby<br>W. Jefferson<br>Boise, ID 83720                                                 | 514 | 0 | 10 | 9 |
| Idaho State Police                         | Lynn Reese<br>700 S Stratford Drive<br>Meridian, ID 83642                                                  | 9   | 9 | 9  | 9 |
| Idaho State Tax Commission                 | Warehouse/Patty Hapke<br>800 Park Plaza IV<br>Boise, ID 83721<br>patty.hapke@tax.idaho.gov<br>208-334-7525 | 10  | 3 | 5  | 5 |
| Idaho State University                     | Michelle Kase<br>921 S Eighth Ave, Stop 8410<br>Pocatello, ID 83209-8410                                   | 2   |   |    |   |
| Idaho State University, Eli Oboler Library | Beth Downing<br>850 S. 9th Ave.<br>Mail stop 8089<br>Pocatello, ID 83209<br>208-282-2940                   | 2   |   | 2  | 2 |
| Idaho Supreme Court, Library Annex         | Chris Quigley<br>322 E Front Street, Ste 560<br>Boise, ID 83702                                            | 2   |   |    |   |
| Insurance State Fund                       | Pamela Watson<br>PO Box 83720<br>Statehouse Mail<br>Boise, ID 83720-0044                                   | 1   |   |    |   |
| Insurance, Department of                   | Pamela Murray<br>700 W State St<br>PO Box 83720<br>Boise, ID 83720-0043                                    | 1   |   | 1  | 3 |
| Jefferson County                           | Colleen Casper Poole, Clerk<br>210 Courthouse Way STE 100<br>Rigby, ID 83442                               | 1   |   |    |   |
| Jerome County                              | Michelle Emerson, Clerk<br>300 N Lincoln-rm 301<br>Jerome County Courthouse<br>Jerome, ID 83338-2344       | 1   |   |    |   |

|                                                       |                                                                                                           |    |    |    |    |
|-------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|----|----|----|----|
| Juvenile Correction Center                            | Erica Maupin<br>PO Box 40<br>2220 E 600 N<br>St Anthony, ID 83445                                         | 1  |    |    |    |
| Juvenile Corrections, Department of                   | Nancy Bishop<br>954 W Jefferson<br>PO Box 83720<br>Boise, ID 83720-0285                                   | 1  |    |    |    |
| Kansas Supreme Court Law Library                      | Kansas Judicial Center Attn.<br>Ms. Marcia Hannon<br>301 SW 10th Avenue<br>Topeka, KS 66612               | 0  | 1  | 1  | 1  |
| Kootenai County                                       | Jim Brannon<br>324 W Garden<br>Kootenai County Justice Bldg<br>Coeur D'Alene, ID 83814                    | 9  |    |    |    |
| Labor, Department of                                  | Karen Rash<br>317 Main, 4th Floor<br>Boise, ID 83735-0520                                                 | 1  |    |    |    |
| Lands, Department of                                  | Beccie Stange<br>300 N Sixth Street, STE 103<br>PO Box 83720<br>Boise, ID 83720-0050                      | 2  |    |    |    |
| Latah County                                          | Henrienne Westberg<br>522 S Adams<br>County Courthouse<br>Moscow, ID 83843-0568                           | 4  |    |    | 3  |
| Law Enforcement Academy                               | Cal Edwards<br>ISU College Of Technology<br>921 S 8th Avenue Stop 8380<br>Pocatello, ID 83209-8380        | 1  |    |    |    |
| Legislative Auditor                                   | Shelly Sheridian<br>Statehouse RM E135<br>Statehouse Mail<br>Boise, ID 83720-0054                         | 1  |    |    |    |
| Legislative Services                                  | Jackie Gunn<br>700 W. Jefferson St. W-133<br>P.O. Box 83720<br>Boise, ID 83720-0054                       | 14 | 14 | 14 | 15 |
| Legislative Services Office, Budget & Policy Analysis | Paul Headlee<br>700 W. Jefferson Street<br>Boise, ID 83720                                                | 0  | 3  | 3  | 3  |
| Legislature, House of Representatives                 | Terri Franks Smith<br>Statehouse, Room 308<br>PO Box 83720<br>Boise, ID 83720-3900                        | 19 |    | 5  | 5  |
| Legislature, Senate                                   | Sarah Jane McDonald<br>Sergeant at Arms<br>P.O. Box 83720<br>Boise, ID 83720-0081                         | 12 | 14 | 14 | 14 |
| Lemhi County                                          | Terri Morton<br>206 Courthouse Drive<br>Lemhi County Courthouse<br>Salmon, ID 83467-3900                  | 1  |    |    |    |
| Lewis and Clark State College Library                 | Samantha Thompson-Franklin<br>500 Eighth Avenue Library<br>Lewiston, ID 83501                             | 1  |    |    |    |
| Lewis County                                          | Lisa Winner, Clerk<br>510 Oak Street, Room 1<br>Nezperce, ID 83543-5065                                   | 2  |    |    |    |
| Libraries, Idaho Commission for                       | Danna Angevine<br>Statehouse Mail<br>Boise, ID 83720                                                      | 1  |    |    |    |
| Library Of Congress/ Anglo-American ACQS              | Govt Documents Section/ McGowan<br>101 Independence Ave, SE<br>Washington, DC 20540-4172                  | 2  |    |    |    |
| Lieutenant Governor, Office of                        | Administrative Assistant<br>Statehouse Room 225<br>P.O. Box 83720<br>Boise, ID 83720-0057                 | 1  | 1  | 1  | 1  |
| Lincoln County                                        | Brenda Farnworth<br>111 West Street, STE C<br>County Courthouse<br>Shoshone, ID 83352-1501                | 3  |    |    |    |
| Local Highway Technical Assistance Council            | Byron Keely<br>3330 Grace Street<br>Boise, ID 83702-0058                                                  | 1  |    |    |    |
| Madison County                                        | Kim Muir, Clerk<br>134 E Main<br>PO Box 389<br>Rexburg, ID 83440-0389                                     | 1  |    |    |    |
| Medicine, State Board of                              | Nancy Ker<br>PO Box 83720<br>Statehouse Mail<br>Boise, ID 83720-0058                                      | 1  |    |    |    |
| Military Division                                     | Staff Judge Advocate<br>3882 W Ellsworth Street<br>Building 440<br>Boise, ID 83705-8037                   | 2  |    |    |    |
| Idaho Military Division                               | Gayla Crall<br>4040 W. Guard St.<br>Bldg-600<br>Boise, ID 83705<br>dturner2@imd.idaho.gov<br>208-422-5242 |    |    | 2  | 2  |
| Minidoka County                                       | Patty Temple, Clerk<br>Minidoka County<br>Courthouse 715 G Street<br>PO Box 368<br>Rupert, ID 83350       | 9  |    |    |    |

|                                             |                                                                                                      |   |   |   |   |
|---------------------------------------------|------------------------------------------------------------------------------------------------------|---|---|---|---|
| Nez Perce County                            | Patty Weeks<br>1230 Main Street<br>PO BOX 896<br>Lewiston, ID 83501-0896                             | 9 |   |   |   |
| Nicholas Blancett                           | Nicholas Blancett<br>12072 W. Blake Dr<br>Star, ID. 83669<br>208-957-8584                            | 0 | 1 |   |   |
| North Idaho College Library                 | Mike Berg<br>1000 W Garden Ave<br>Law Enforcement Program<br>Coeur D'Alene ID 83814                  | 2 |   |   |   |
| Nursing, State Board of                     | Linda Coley, Mgt Asst<br>280 N 8th Suite 210<br>Boise, ID 83720-0061                                 | 1 |   |   |   |
| Occupational License Bureau                 | Tona Cory, Bureau Chief<br>JR Williams Building<br>Boise, ID 83720-0063                              | 1 |   |   |   |
| Oneida County Pardons & Parole Commission   | Lon Colton, Clerk<br>10 Court Street<br>Oneida County Courthouse<br>Malad, ID 83252-1200             | 3 |   |   |   |
| Owyhee County                               | Angela Barkell<br>PO Box 128<br>Owyhee County Courthouse<br>Murphy, ID 83650-0128                    | 2 |   |   |   |
| Pardons & Parole, Idaho Commission of       | Mary Schoeler<br>3056 Eder Street<br>Boise, ID 83705<br>mschoele@idoc.idaho.gov<br>208-334-2520      | 3 | 1 | 1 | 1 |
| Parks and Recreation, Department of         | Dave Ricks<br>5657 Warm Springs<br>PO Box 83720<br>Boise, ID 83720-0065                              | 2 |   |   |   |
| Payette County                              | Betty J. Dressen, Clerk<br>1130 Third Avenue N, RM 104<br>Payette, ID 83661                          | 3 |   |   |   |
| Peace Officers Standards & Training Academy | Jeff Black<br>700 S Stratford<br>Meridian, ID 83642                                                  | 1 |   |   |   |
| Performance Evaluation, Office of           | Margret Campbell<br>954 W Jefferson Street, Fl 2<br>Boise, ID 83702                                  | 1 |   |   |   |
| Perry, Mike                                 | Capitol Mall Security<br>Statehouse Mail<br>Boise, ID 83702                                          |   |   | 1 | 1 |
| Power County                                | Sharee Sprague, Clerk<br>543 Bannock Ave<br>Power County Courthouse<br>American Falls, ID 83211-1200 | 1 |   |   |   |
| Professional-Technical Education            | Kirk C. Dennis<br>PO Box 83720<br>Boise, ID 83720-0095                                               | 1 |   |   |   |
| Public Utilities Commission                 | Diane Holt, Commission Secretary<br>472 W. Washington<br>Statehouse Mail<br>Boise, ID 83720-0074     | 1 | 1 | 1 | 1 |
| Real Estate Commission                      | Jeanne Jackson-Helm<br>633 N 4th Street<br>PO Box 83720<br>Boise, ID 83720-0077                      | 1 |   |   |   |
| Retirement System, Public Employees         | Cheri Campbell<br>607 N Eighth<br>Statehouse Mail<br>Boise, ID 83702                                 | 1 |   |   |   |
| Reynolds and Reynolds Company               | Kim Harris<br>Reynolds & Reynolds<br>1 Reynolds Way<br>Dayton, ID 45430                              | 0 | 1 |   |   |
| Sawtooth Law Offices                        | Debby Long<br>P.O. Box 7985<br>Boise, ID 83707                                                       |   | 1 |   | 1 |

|                                                  |                                                                                                                                              |   |   |   |   |
|--------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|---|
| Senator Mike Crapo                               | Cindi Roberts<br>251 E Front Street, STE 205<br>Boise, ID 83702                                                                              | 2 |   |   |   |
| Shoshone County                                  | Peggy De-Lange White<br>Shoshone County<br>700<br>(Address incorrect in Original sheet,<br>cannot be corrected till new order comes<br>in)   | 3 |   |   |   |
| Spokane County Law Library                       | Cynthia Lucas<br>1116 W Broadway Ave 2nd flr<br>Spokane County Courthouse<br>Spokane, WA 99260<br>1-509-477-3680<br>clucas@spokanecounty.org | 1 | 1 | 1 | 1 |
| State Controllers Office                         | Brandon Woolf<br>700 W. State St<br>Joe R. Williams Building<br>Boise, Idaho 83720                                                           | 0 | 5 |   |   |
| Supreme Court Law Library                        | Rhonda Willoughby<br>451 W State Street<br>Boise, ID 83702                                                                                   | 9 |   |   |   |
| Tax Appeals, Board of                            | Steve Wallace<br>3380 Americana Terrace STE 110<br>Boise, ID 83706                                                                           | 1 |   |   |   |
| Teton County                                     | Mary Lou Hansen, Clerk<br>89 N Main, #1<br>Teton County Courthouse<br>Driggs, ID 83422-5164                                                  | 4 |   |   |   |
| Transportation , Department of                   | Stephanie Wright, Legal Dept<br>PO Box 7129<br>3311 West State<br>Boise, ID 83707-1129                                                       | 2 |   | 1 | 1 |
| Treasurer, Office of the State                   | Ron G. Crane, Treasurer<br>Statehouse Room 102<br>PO Box 83720<br>Boise, ID 83720-0091                                                       | 1 |   |   |   |
| Twin Falls County Court, Fifth Judicial District | Julie Behm<br>427 Shoshone St. N.<br>Twin Falls, ID 83301                                                                                    | 6 | 6 | 6 | 6 |
| Twin Falls Public Library                        | Acquisitions<br>201 4B Ave East<br>Twin falls, ID 83301                                                                                      | 1 | 1 | 1 | 1 |
| University of Idaho Library, Serials Dept.       | Clinton Johnson<br>Special Collections & Archives<br>MS 442351<br>Moscow, ID 83844-2351                                                      | 1 |   | 1 | 1 |
| University of Idaho, Law Library                 | Stacey Anderson 875<br>Perimeter Drive<br>MS 2350<br>Moscow, ID 83844-2324                                                                   | 8 |   |   | 6 |
| University of Iowa Law Library                   | Jennifer Provorse 220<br>Boyd Law Building<br>Iowa City, IA 52242-1166                                                                       | 8 |   |   | 1 |
| US Courts Library                                | Cheryl Blare<br>PO Box 193939<br>San Francisco, CA 94103-1526                                                                                | 1 |   |   |   |
| US Supreme Court Library                         | Kimberly Kiely<br>3050 V Street NE<br>Washington, DC 20018                                                                                   | 1 |   |   |   |
| Valley County                                    | Doug Miller, Clerk<br>219 N Main ST<br>PO Box 1350<br>Cascade, ID 83611-1350                                                                 | 2 |   |   |   |
| Vocational Rehabilitation, Idaho Division of     | Jacque Truax, Fiscal Manager<br>650 W. State St #150<br>Boise, Idaho 83720<br>jacque.truax@vr.idaho.gov<br>208-334-3390                      | 1 | 1 | 1 |   |
| Washington County                                | Betty J. Thomas<br>256 E Court<br>PO Box 670<br>Weiser, ID 83672                                                                             | 4 |   |   |   |
| Water Resources, Idaho Department of             | Kimi White<br>322 E. Front Street<br>Boise, Idaho 83702<br>kimi.white@idwr.idaho.gov<br>208-287-4815                                         | 1 | 1 | 1 | 1 |





## Idaho Sheriffs' Association

3100 S. Vista Ave. Suite 203  
Boise, ID 83705  
208-287-0001  
[www.idahosheriffs.org](http://www.idahosheriffs.org)

March 19, 2019

### *Officers, Board of Directors and Staff*

*President: Sheriff Ben  
Wolfinger, Kootenai County*

*First Vice-President: Sheriff  
Craig Rowland, Bingham  
County*

*Second Vice-President:  
Sheriff Steve Bartlett, Ada  
County*

*Immediate Past President:  
Sheriff Kieran Donahue,  
Canyon County*

*Secretary: Sheriff Richard  
Skiles, Latah County*

*Jail Standards Committee  
Chair: Sheriff Paul Wilde,  
Bonneville County*

*Operations Committee  
Chair: Sheriff Dave  
Sanders, Camas County*

*Training Committee Chair:  
Sheriff Lorin Nielsen,  
Bannock County*

*Legislative Committee  
Chair: Sheriff Chris Goetz,  
Clearwater County*

*Cindy Malm, Jail Standards  
Coordinator/Inspector*

*Tammara Tarvin,  
Programs Manager*

*Mike Kane, Lobbyist*

*Shari Fernandez, Events  
Manager*

*Vaughn Killeen, Executive  
Director*

The Honorable Representative Thomas Dayley  
Judiciary and Rules Committee Chair  
State Capitol 700 W Jefferson  
Boise ID 83720

Subject: Report on the daily cost of inmate incarceration

Dear Representative Dayley,

As you may know, Idaho Code 20-237a requires the germane committees of the legislature to review the daily cost for housing state inmates in county jails every three years. Pursuant to this statute the Idaho Sheriffs' Association (ISA) first reported to the Senate and House Judiciary and Rules Committees in 2001.

Sheriffs have a close working relationship with the Idaho Department of Correction (IDOC). County inmates are often in transition to becoming state inmates and there is a continual flow of inmates from jails to IDOC and to a lesser degree from IDOC to county jails. Inmate movement can sometimes be complicated and costs associated with housing inmates is always a work in progress, however the day after an order committing the inmate to IDOC is received from the judge the prisoner's cost is charged to the state.

The Idaho Sheriffs' Association performs many functions that the IRS has designated as "lessening the burden of government". Some of these activities include annually inspecting Idaho jails for compliance to Idaho Jail Standards, managing the statewide VINE (victim notification) program, managing the statewide sex offender registration (Offender Watch) program, training sheriffs, staff and detention officers and coordinating with the DEA to distribute funds used to eradicate outdoor marijuana grows.

The ISA initially developed minimum jail standards in 1978. There are currently 328 recommended and mandatory jail standards reflecting best practices, statute and case law. Out of 44 counties, 36 have operational jails, 6 have closed, and one county only has a holding facility that can hold a person no longer than 4 hours. Cassia and Minidoka have consolidated their jails into one facility. Approximately 4,200 inmates are being held in county jails as of March, 2019.

The daily fee for housing a state prisoner was \$35 until 1998 at which time it was increased to \$40. At the same time the legislature required that hence forth the legislature would review the cost of housing state prisoners in county jails every 3 years. The next increase occurred in 2018 when the housing fee increased to \$55 for the first 7 days, and \$75 thereafter.

As of the earlier part of this month there were 633 state inmates in county jails. Another 336 state inmates were in county jails that were not yet eligible for transfer for various reasons including additional pending charges, jurisdictional review, appeals or court ordered hearings. The cost for housing these 336 inmates is not charged to the state.

The average daily cost per inmate, based on our latest survey of jails, is \$86.55. We employ an automated cost analysis document developed by the Ada County Sheriff's Office. It's a fill-in document with categories such as salaries, benefits, inmate food and medical expenses, maintenance, training, inmate transport, equipment, human resource, supplies and numerous other categories. Inmate days served is added and the program calculates the entries and arrives at an inmate cost per day. These are averaged using a formula that accounts for volume.

To provide perspective, Ada is \$88.16 per day, Nez Perce is \$103.41 per day, Elmore is \$65.55 per day and Bonneville is \$75.73 per day. Cost fluctuations are due to the size of the jail and economies of scale, the extent of jail programing for inmates, salaries and benefits, and staffing levels.

Hopefully, this report has provided some insight into inmate daily costs. If you have any questions please contact me or the Association's executive director Vaughn Killeen.

Sincerely,



Paul Wilde  
Bonneville County Sheriff  
Idaho Jails Standards Chair  
208-529-1375  
[pwilde@co.bonneville.id.us](mailto:pwilde@co.bonneville.id.us)

Cc: House Judiciary and Rules Committee  
ISA Board of Directors  
Vaughn Killeen



**AMENDED AGENDA #2**  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:30 pm OR Upon Adjournment**  
**Room EW42**  
**Wednesday, March 27, 2019**

| SUBJECT                     | DESCRIPTION                                          | PRESENTER            |
|-----------------------------|------------------------------------------------------|----------------------|
| <a href="#">H 137aa,aaS</a> | Dangerous Dogs / Senate Amendment                    | Representative Moyle |
| <a href="#">H 78aa,aaS</a>  | DUI Diversion / Senate Amendment                     | Representative Kerby |
| <a href="#">H 30aaS</a>     | Crimes / Developmental Disability / Senate Amendment | Representative Ricks |

***If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

|                      |              |               |
|----------------------|--------------|---------------|
| Chairman Dayley      | Rep Ehardt   | Rep Troy      |
| Vice Chairman Chaney | Rep Scott    | Rep Young     |
| Rep Kerby            | Rep Goesling | Rep Gannon    |
| Rep Amador           | Rep Hartgen  | Rep McCrostie |
| Rep Zito             | Rep Marshall | Rep Wintrow   |
| Rep Zollinger        | Rep Ricks    | Rep Davis     |

COMMITTEE SECRETARY

Wendy Carver-Herbert  
Room: EW56  
Phone: 332-1127  
email: [hjud@house.idaho.gov](mailto:hjud@house.idaho.gov)

MINUTES

## HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

**DATE:** Wednesday, March 27, 2019

**TIME:** 1:30 pm OR Upon Adjournment

**PLACE:** Room EW42

**MEMBERS:** Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis

**ABSENT/  
EXCUSED:** Representative Gannon

**GUESTS:** Andrew Masser, IACDL

**Chairman Dayley** called the meeting to order at 1:30 p.m.

**MOTION:** **Rep. Marshall** made a motion to approve the minutes from the February 21, 2019 and March 21, 2019 meetings. **Motion carried by voice vote.**

**Chairman Dayley** explained the motions that can be made on Senate amendments.

**H 30aaS:** **Rep. Ricks** presented the Senate amendments for **H 30aaS**.

**MOTION:** **Rep. McCrostie** made a motion to concur with the amendments made in the Senate to **H 30aaS**.

**Rep. Chaney** responded to questions from the committee by explaining the amendment adds an evaluation committee to the list of parties that may examine a person suspected of being mentally incapable of standing trial. In cases where the defendant is suspected of having a developmental disability, an evaluation by specially trained evaluation committee will be required.

**VOTE ON  
MOTION:** **Chairman Dayley** called for a vote on the motion. **Motion carried by voice vote.** **Rep. Ricks** will sponsor the bill on the floor.

**H 78aa,aaS:** **Rep. Kerby** presented the Senate amendments for **H 78aa,aaS**. He stated the changes did not affect the functioning of the program. It more clearly describes how a person can get their driver's license back. The amendment also addressed some of the prosecuting attorneys' objections, by requiring offenders to sign a sworn affidavit that can be used as evidence of guilt if they do not successfully complete the diversion program.

In answer to a question from the Committee, **Rep. Kerby** stated the affidavit would be in the offender's file, but it is not a guilty plea. If the offender is involved in other pending non-criminal case proceedings, the affidavit could be accessed. He said more prosecuting attorneys would be willing to use the program as a result of the change.

**Andrew Masser**, IACDL spoke in support of **H 78aa,aaS**. In answer to a question from the Committee, Mr. Masser explained it would be the ethical duty of a defense attorney to inform their client that the affidavit could be used in other non-criminal court proceedings.

**MOTION:** **Rep. Chaney** made a motion to concur with the amendments made in the Senate to **H 78aa,aaS**. **Motion carried by voice vote.** **Rep. Kerby** will sponsor the bill on the floor.

**H 137aa,aaS:** **Rep. Chaney** presented the Senate amendments for **H 137aa,aaS**. He stated the changes did not change how the bill would operate once it becomes law. The changes are primarily grammatical. The amendment adds several references to Subsection 7, which lists conditions a judge can put on someone for keeping a dog if it is found to be dangerous. It adds a provision for a tattoo to be equal to an implant in identifying a dog.

**MOTION:** **Rep. Kerby** made a motion to concur with the amendments made in the Senate to **H 137aa,aaS**. **Motion carried by voice vote.** **Rep. Moyle** will sponsor the bill on the floor.

**Chairman Dayley** thanked the Page, **Sawyer Greaves** and Committee Secretary, **Wendy Carver-Herbert**.

**Rep Ehardt** thanked **Chairman Dayley** and **Vice Chairman Chaney**.

**Chairman Dayley** thanked the Committee for their hard work and due diligence. He reiterated the Committee's unique role in reviewing compensation for judges. He encouraged the Committee to review the letter of agreement with the Courts. This was discussed in a previous Committee meeting (March 19, 2019). He encouraged the Committee to let him know if there are any questions or ideas for consideration.

**ADJOURN:** There being no further business to come before the Committee, the meeting adjourned at 2:00 p.m.

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Representative Dayley  
Chair

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Wendy Carver-Herbert  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
1:30 pm OR Upon Adjournment  
Room EW42  
Monday, April 01, 2019

| SUBJECT | DESCRIPTION         | PRESENTER |
|---------|---------------------|-----------|
|         | Approval of Minutes |           |

***If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

|                      |              |               |
|----------------------|--------------|---------------|
| Chairman Dayley      | Rep Ehardt   | Rep Troy      |
| Vice Chairman Chaney | Rep Scott    | Rep Young     |
| Rep Kerby            | Rep Goesling | Rep Gannon    |
| Rep Amador           | Rep Hartgen  | Rep McCrostie |
| Rep Zito             | Rep Marshall | Rep Wintrow   |
| Rep Zollinger        | Rep Ricks    | Rep Davis     |

COMMITTEE SECRETARY

Wendy Carver-Herbert  
Room: EW56  
Phone: 332-1127  
email: [hjud@house.idaho.gov](mailto:hjud@house.idaho.gov)

MINUTES  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**

**DATE:** Monday, April 01, 2019  
**TIME:** 1:30 pm OR Upon Adjournment  
**PLACE:** Room EW42  
**MEMBERS:** Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis (Page)  
**ABSENT/  
EXCUSED:** Representatives Kerby, Zollinger, Ehardt, Hartgen, Young  
**GUESTS:** None  
**Chairman Dayley** called the meeting to order at 1:31 p.m.  
**MOTION:** **Rep. Marshall** made a motion to approve the minutes of February 19, 2019 and March 27, 2019. **Motion carried by voice vote.**  
**MOTION:** **Rep. Wintrow** made a motion to approve the minutes of February 27, 2019. **Motion carried by voice vote.**  
**ADJOURN:** There being no further business to come before the Committee, the meeting adjourned at 1:33 p.m.

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Representative Dayley  
Chair

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Wendy Carver-Herbert  
Secretary